

**BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE  
STATE OF OREGON**

In the Matter of Transfer Application    )    FINAL ORDER APPROVING A CHANGE IN  
T-10019, Umatilla County                )    POINT OF DIVERSION, PLACE OF USE AND  
  )    CHARACTER OF USE

**Authority**

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION  
P.O. BOX 638  
PENDLETON, OREGON 97801

**Findings of Fact**

**Background**

1. On October 18, 2005, the Confederated Tribes of the Umatilla Indian Reservation filed a transfer application proposing to change the point of diversion, the place of use and character of use under Certificate 81151. The Department assigned the application number T-10019.

2. The right to be transferred is as follows:

**Certificate:** 81151 in the name of A. L. DEMARIS (confirmed by the Walla Walla River Decree)

**Use:** IRRIGATION of 16.23 ACRES

**Priority Dates:** 1876 for 8.14 ACRES, 1883 for 3.25 ACRES, 1893 for 3.21 ACRES and 1900 for 1.63 ACRES

**Rate:** ONE-HALF MINERS'S INCHES per acre, measured at the point of diversion from the source

**Source:** SOUTH FORK WALLA WALLA RIVER, a tributary of the WALLA WALLA RIVER

**NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW**

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
4 N	37 E	WM	5	SW NE

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	37 E	WM	5	NW NE	3.60
4 N	37 E	WM	5	SW NE	7.43
4 N	37 E	WM	5	SE NE	2.00
4 N	37 E	WM	5	NE NW	1.80
4 N	37 E	WM	5	NE SE	1.40

3. Transfer Application T-10019 proposes to move the POINT OF DIVERSION approximately 3200 feet downstream in the source to a point located:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 N	37 E	WM	5	NE NW	165 FEET SOUTH AND 830 FEET EAST FROM SW CORNER OF SECTION 32

4. Transfer Application T-10019 also proposes to change the PLACE OF USE and CHARACTER OF USE WITHIN A FISH HATCHERY located:

Twp	Rng	Mer	Sec	Q-Q
4 N	37 E	WM	5	NE NW
5 N	37 E	WM	32	SW SW

5. Notice of the application for transfer was published on October 25, 2005, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
6. On November 22, 2006, the Department mailed a copy of the *draft* Preliminary Determination proposing to approve Transfer Application T-10019 to the applicant. The cover letter that accompanied the *draft* Preliminary Determination set forth a deadline of December 29, 2006, for the applicant to respond with comments. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
7. On April 11, 2007, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10019 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on April 17, 2007, and in the Valley Herald newspaper on June 1, June 8 and June 15, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
8. The Oregon Department of Fish and Wildlife has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is currently equipped with an appropriate fish screening and/or by-pass device.

9. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
10. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
11. The existing authorized use, evidenced by Certificate 81151, has a year round season, however, the certificate does not specify a duty of water. The right is subject to beneficial use without waste. The Walla Walla River Decree does not specify a duty of water for the right evidenced by Certificate 81151. Because use of the right for irrigation at full rate year round would exceed amounts necessary to accomplish beneficial use for irrigation, the Department proposes to limit the total duty of water under the proposed new use to the annual quantity that could have been beneficially used without waste for irrigation, in order to make a positive finding that approval of that transfer application will not result in enlargement of the right.
12. In order to prevent enlargement of the water right, the applicant has agreed that a duty of water in the amount of 97.0 acre-feet may be allowed for the new use each year. Additionally, because a maximum duty that can be diverted has been established, the Department has determined use within a fish hatchery can be allowed year round. The approval of this transfer is dependent upon the applicant installing a flow-meter or other suitable measuring device as may be approved by the Watermaster.
13. If in the future the water user proposes changing the character of use back to irrigation or some other out-of-stream consumptive use, the Department will, in order to again prevent enlargement of the right, review the request and determine to what extent any beneficial use limitation should be imposed.
14. The Department has determined that the instantaneous amount of water that may be diverted for the new proposed use is limited to 0.61 cubic foot per second (cfs), with an annual duty of 97 acre-feet and is delineated by priority date as follows:

Priority Date	%	Calculated CFS.	Calculated acre-feet (af)
1876	50.15	0.31 cfs	48.65 af
1883	20.03	0.12 cfs	19.43 af
1893	19.78	0.12 cfs	19.18 af
1900	10.04	0.06 cfs	9.74 af

15. The proposed changes in POINT OF DIVERSION, PLACE OF USE and CHARACTER OF USE as conditioned, (maximum duty amount per year of 97.0 acre-feet) would not result in enlargement of the right.
16. The proposed change would not result in injury to other water rights.

## **Conclusions of Law**

The proposed changes in point of diversion, place of use and character of use in application T-10019 are consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

### **Now, therefore it is ORDERED:**

1. The changes in point of diversion, place of use and character of use proposed in Transfer Application T-10019 are approved.
2. Water right certificate 81151 is cancelled.
3. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 81151 and any related decree.
4. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department within one year after the deadline (**October 1, 2009**) for completion of the changes and full beneficial use of the water.
5. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion, and is limited to an instantaneous rate of 0.61 cfs, not to exceed a total of 97.0 acre feet per year.
6. Prior to the use of water from at the new point of diversion, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
7. The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.
8. When using water under this right, the water user shall record the amounts used under this right daily and will make the record available to the Watermaster upon request.
9. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 28<sup>th</sup> day of August, 2007.



Phillip C. Ward, Director

Mailing date: AUG 30 2007