

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

In the Matter of Transfer Application T-9766, Umatilla County, Oregon)))	FINAL ORDER APPROVING CHANGE IN POINT OF DIVERSION
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ORS 537.705, and 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

Perry & Janine Dabbling
43573 McKay Drive
Pendleton, OR 97801

Findings of Fact

1. Perry & Janine Dabbling filed an application to transfer the point of diversion, under Certificate 55836. The Department assigned the application number T-9766.

2. The portion of the right to be transferred is as follows:

Certificate: 55836 in the name of Marion Jack Improvement District
Use: Irrigation of 4.41 acres
Priority Date: January 3, 1912
Quantity: 0.055 cubic foot per second
Source: McKay Creek, tributary to the Umatilla River

Authorized Place of Use:

Township		Range		Meridian	Sec	¼	¼	Tax Lot	Acreage
2	N	32	E	W.M.	27	NE	SW	206	0.96

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.

Township		Range		Meridian	Sec	¼	¼	Tax Lot	Acreage
2	N	32	E	W.M.	27	NW	SW	206	3.45

- The authorized point of diversion is not specified on Certificate 55836. Certificate 55836 was issued as the remaining right upon cancellation of a portion of the right confirmed by Certificate 7515. The order approving Transfer Application W-66, recorded in Special Order Vol. 8, Pages 363 to 365, authorized a new point of diversion for the lands described above, now proposed to be modified by Application T-9766.
- Satisfactory proof has been made on the change in point of diversion approved under Application W-66 and is a "water use subject to transfer." The authorized point of diversion is located:

Township		Range		Meridian	Sec	¼	¼	Lot	Location
2	N	32	E	W.M.	28	NE	SE		N 10 Degrees 37 Minutes West, 1672 feet from the SE Corner, Section 28

- Application T-9766 proposes to change the point of diversion to the Marion Jack Improvement District's diversion below McKay Dam located at:

Township		Range		Meridian	Sec	¼	¼	Lot	Location
2	N	32	E	W.M.	34	NE	SW		3183 feet South and 666 feet East from the N¼ Corner, Section 34

- Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. The Oregon Department of Fish and Wildlife did respond by stating that there does not appear to be a potential for injury to instream or other water rights as a result of the transfer.
- The new point of diversion (Marion Jack Improvement District's diversion structure) is equipped with appropriate fish screening facilities.
- During review of the application, the Department determined that the water rights for some of lands originally identified in the application may be subject to cancellation because of non-use. On January 31, 2005, the Department received an affidavit from Perry and Janine Dabbling indicating that a portion of the right evidenced by Certificate 55836 had been abandoned and requesting cancellation of that portion of the right. The right allows the use of 0.003 cubic foot per second from McKay Creek for the purpose of primary irrigation of 0.22 acres.
- Application T-9766 has been modified to exclude the portion of the right to be voluntarily cancelled. Application T-9645, filed by the Marion Jack Improvement District (MJID) also affects Certificate 55836 and is being processed concurrently. The portion of the right that has been abandoned will be cancelled on approval of Application T-9645.
- Water has been used within the last five years on the lands now proposed for transfer according to the terms and conditions of the right and there is no evidence available that

would demonstrate that the portion of the right affected by Application T-9766 is subject to forfeiture under ORS 540.610.

11. A pump and pipe line system sufficient to use the full amount of water allowed under the existing right are present.
12. A suitable measuring device is installed at the Marion Jack Improvement District's diversion structure.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

Conclusions of Law

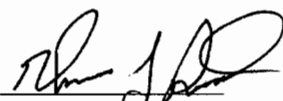
The change in point of diversion proposed in application T-9766 is consistent with the requirements of OAR Chapter 540 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of diversion proposed in application T-9766 is approved.
2. Transfer Application T-9766 is approved concurrent with the order approving Transfer Application T-9645, recorded in Special Order Volume 65, page 85.
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 55836 and any related decree.
4. The proposed change shall be completed on or before October 1, 2006.
5. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted together with the Claim of Beneficial Use submitted by Marion Jack Improvement District for Transfer Application T-9645. The Claims of Beneficial Use for T-9645 and T-9766 shall be submitted by the applicants to the Department by October 1, 2007.
6. Because T-9766 changes the point of diversion to the Marion Jack Improvement District's point of diversion and the place of use is located within the MJID's boundaries, upon determination of satisfactory proof of the completed change authorized herein, the Department shall modify the water right record under certificate 81502 and any superseding certificates.
7. 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.
8. The water user shall maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted.

9. The water user shall maintain a fish screen or fish by-pass device, as appropriate, at the new point of diversion.

Dated at Salem, Oregon this 11th day of AUGUST, 2005.


for Phillip C. Ward
Director

Mailing date: AUG 24 2005