

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

In the Matter of Notice of a Point of        )     **FINAL ORDER APPROVING CHANGES**  
Diversion Change Due to Government        )     **IN POINTS OF DIVERSION DUE TO**  
Action, T-11611, Umatilla County            )     **GOVERNMENT ACTION**

**Authority**

ORS 540.510(6) establishes a notification and approval process for changes in point of diversion when government action results in or creates a reasonable expectation of a change in the surface level of a surface water source.

**Applicant**

Zell Ditch Water Users Association  
54220 Walla Walla River Road  
Milton-Freewater, OR 97862

**Agent**

Richard Langley  
54220 Walla Walla River Road  
Milton-Freewater, OR 97862

**Findings of Fact**

**Background**

1. On June 12, 2013, the Zell Ditch Water Users Association filed a notification of intent to make a change in points of diversion under Certificates 13234, 12696, 13104, 13233, 13157, 76328, 13099, 12769, 13281, 12704, 13122, 13220 and 13219. The Department assigned the notification number T-11611.
2. The notification of intention to change the point of diversion was published on the Department's weekly public notice on June 18, 2013.
3. On July 26, 2013, Richard Langley, agent for the Zell Ditch Water Users Association submitted amendments to the application, correcting the authorized place of use tabulation for Certificate 12696.
4. The first right included in the notification is as follows:  
**Certificate:** 13234 in the name of CHARLES L. STEWART (confirmed by Walla Walla River decree)  
**Use:** IRRIGATION of 5.7 ACRES  
**Priority Date:** 1873  
**Rate:** One and One-Half miner's inches per acre

This is a final 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 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.

**Source:** WALLA WALLA RIVER, tributary to the COLUMBIA RIVER

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
5 N	36 E	WM	18	NE SW	5.7

5. The second right included in the notification is as follows:

**Certificate:** 12696 in the name of PETER and ANNIE E. GEISS (confirmed by Walla Walla River decree)

**Use:** IRRIGATION of 8.1 ACRES

**Priority Date:** 1873

**Rate:** One and One-Half miner's inches per acre

**Source:** WALLA WALLA RIVER, tributary to the COLUMBIA RIVER

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
5 N	36 E	WM	18	NE SW	8.1

6. The third right included in the notification is as follows:

**Certificate:** 13104 in the name of ESTATE OF ANNA OLINGER (confirmed by Walla Walla River decree)

**Use:** IRRIGATION of 4.7 ACRES

**Priority Date:** 1873

**Rate:** One and One-Half miner's inches per acre

**Source:** WALLA WALLA RIVER, tributary to the COLUMBIA RIVER

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
5 N	36 E	WM	18	NW SW	1.4
5 N	36 E	WM	18	NE SW	3.3

7. The fourth right included in the notification is as follows:

**Certificate:** 13233 in the name of W.W. and RHODA B. STEWARD (confirmed by Walla Walla River decree)

**Use:** IRRIGATION of 5.0 ACRES

**Priority Date:** 1873

**Rate:** One and One-Half miner's inches per acre

**Source:** WALLA WALLA RIVER, tributary to the COLUMBIA RIVER

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
5 N	36 E	WM	18	NW SW	0.6
5 N	36 E	WM	18	NE SW	4.4

8. The fifth right included in the notification is as follows:

**Certificate:** 13157 in the name of MARY E. RICHARDSON (confirmed by Walla Walla River decree)

**Use:** IRRIGATION of 9.7 ACRES

**Priority Date:** 1877

**Rate:** One and One-Half miner's inches per acre

**Source:** WALLA WALLA RIVER, tributary to the COLUMBIA RIVER

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
5 N	36 E	WM	18	NE SW	2.8
5 N	36 E	WM	18	NW SW	6.9

9. The portion of the sixth right included in the notification is as follows:

**Certificate:** 76328 in the name of CYRUS POWELL (confirmed by Walla Walla River )

**Use:** IRRIGATION of 11.28 ACRES

**Priority Date:** 1876 (Tract 1)

**Source:** WALLA WALLA RIVER, tributary to the COLUMBIA RIVER

**Authorized Place of Use:**

IRRIGATION (TRACT 1)					
Twp	Rng	Mer	Sec	Q - Q	Acres
5 N	36 E	WM	18	SW NW	10.84
5 N	36 E	WM	18	SE NW	0.44

10. Certificate 76328 does not state a rate or amount of water. Certificate 76238 is the remaining right issued as the result of Transfer Application T-7642 (see Special Order Volume 53 Pages which modified Certificate 13128. Certificate 13128 describes the amount of water (rate) as *One and One-Half Miner's Inches per acre*, measured at the point of diversion, and should have been included in any confirming or remaining right certificates. Therefore, the Department corrects the scrivener's error of omission and will include the rate of *One and One-Half Miner's Inches per acre on superseding documents of Certificate 76238.*

11. The seventh right included in the notification is as follows:

**Certificate:** 13099 in the name of GEO. R. NORTON (confirmed by Walla Walla River decree)

**Use:** IRRIGATION of 13.3 ACRES

**Priority Date:** 1873

**Rate:** One and One-Half miner's inches per acre

**Source:** WALLA WALLA RIVER, tributary to the COLUMBIA RIVER

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
5 N	36 E	WM	18	SW NW	13.3

12. The portion of the eighth right included in the notification is as follows:

**Certificate:** 12769 in the name of MINNIE E. WILSON-HERPICH (confirmed by Walla Walla River decree)

**Use:** IRRIGATION of 3.66 ACRES

**Priority Date:** 1873

**Rate:** One and One-Half miner's inches per acre

**Source:** WALLA WALLA RIVER, tributary to the COLUMBIA RIVER

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
5 N	36 E	WM	18	SW NW	3.66

13. The ninth right included in the notification is as follows:

**Certificate:** 13281 in the name of SUSAN I. WALLINGFORD (confirmed by Walla Walla River decree)

**Use:** IRRIGATION of 3.29 ACRES

**Priority Date:** 1876

**Rate:** One and One-Half miner's inches per acre

**Source:** WALLA WALLA RIVER, tributary to the COLUMBIA RIVER

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
5 N	36 E	WM	18	SW NW	3.29

14. The tenth right included in the notification is as follows:

**Certificate:** 12704 in the name of C. B. GIRTON (confirmed by Walla Walla River decree)

**Use:** IRRIGATION of 5.0 ACRES

**Priority Date:** 1873

**Rate:** One and One-Half miner's inches per acre

**Source:** WALLA WALLA RIVER, tributary to the COLUMBIA RIVER

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
5 N	36 E	WM	18	NW NW	5.0

15. The eleventh right included in the notification is as follows:

**Certificate:** 13122 in the name of J. N. PETTIT (confirmed by Walla Walla River decree)

**Use:** IRRIGATION of 5.0 ACRES

**Priority Date:** 1873

**Rate:** One and One-Half miner's inches per acre  
**Source:** WALLA WALLA RIVER, tributary to the COLUMBIA RIVER

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
5 N	36 E	WM	7	SW SW	2.0
5 N	36 E	WM	18	NW NW	3.0

16. The portion of the twelfth right included in the notification is as follows:

**Certificate:** 13220 in the name of CARRIE M. SPENCE (confirmed by Walla Walla River decree)

**Use:** IRRIGATION of 0.74 ACRES

**Priority Date:** 1908

**Rate:** One and One-Half miner's inches per acre

**Source:** WALLA WALLA RIVER, tributary to the COLUMBIA RIVER

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
5 N	36 E	WM	7	SW SW	0.74

17. The thirteenth right included in the notification is as follows:

**Certificate:** 13219 in the name of CARRIE M. SPENCE (confirmed by Walla Walla River decree)

**Use:** IRRIGATION of 5.0 ACRES

**Priority Date:** 1873

**Rate:** One and One-Half miner's inches per acre

**Source:** WALLA WALLA RIVER, tributary to the COLUMBIA RIVER

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
5 N	36 E	WM	7	SW SW	5.0

18. Certificates 13234, 12696, 13104, 13233, 13157, 76328, 13099, 12769, 13281, 12704, 13122, 13220 and 13219 do not describe the locations of the point of diversion. However information is available from the Walla Walla River adjudication map and Department staff indicating that the original point of diversion on the Walla Walla River for the Zell Ditch was located as follows:

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
5 N	36 E	WM	15	SE SW	1020 FEET NORTH AND 337 FEET WEST FROM THE S¼ CORNER OF SECTION 18

19. The notification proposes to move the authorized points of diversion approximately 950 feet upstream to:

**Proposed Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
5 N	36 E	WM	18	SW SE	NORTH 45.90362 DEGREES WEST -118.36050

**Review Criteria (ORS 540.510(6))**

20. The original Marie Dorian Dam on the Walla Walla River was constructed out of wooden splashboard for irrigation purposes in the 1880's. In April of 1997, The US Army Corps of Engineers decided that the grade control and irrigation diversion dam at Walla Walla River Mile 47.1 (just upstream from the Couse Creek Road bridge) needed to be removed due to the river undermining it and concern was that this could also undermine the flood control levee on either side of the river. The eight foot tall concrete structure was installed in 1952 by the Corps of Engineers at the same time they installed the Milton-Freewater Flood Protection Levee. The Confederated Tribes of the Umatilla Indian Reservation were also interested in the dam being removed for fish passage reasons and were given emergency authority by the Corps of Engineers to remove the dam. The Tribes paid for a contractor to tear out the concrete dam. Transfer Application T-11611 contains the Marie Dorian dam Removal Report describing how this occurred.
21. Immediately following the removal of the dam, a headcut migrated upstream. Within a year, trees upstream along the left bank of the river died from lack of water. The headcut extended up to and past the Zell Creek Diversion, and as of the spring of 2010 has migrated up to and into the Lampson reach of the river, the next property upstream. The Marie Dorian dam was located approximately 1200 feet downstream of the original Zell ditch point of diversion when looking at the water rights Decree map from the 1930s.
22. The original Zell point of diversion is high and dry by several feet. The Zell ditch users have had to move their point of diversion upstream a few hundred feet at least once in the last 10 years. Survey data from 2010 showing channel bed elevations and surface elevations can be compared to Corps of Engineers survey data from when they constructed their levee, and also elevations taken by the Corps when they were tracking the headcut that occurred following the removal of Marie Dorian dam.
23. The above described action of the government entity has created a reasonable expectation of a change in the surface level of the Walla Walla River that impairs or threatens to impair access to a point of diversion authorized for water right Certificates 13234, 12696, 13104, 13233, 13157, 76328, 13099, 12769, 13281, 12704, 13122, 13220 and 13219.
24. An instream water right exists for the reach of the river in which the authorized point of diversion would be moved upstream, and stream flows within the reach have been historically above the levels allocated under the instream water right. Thus, the instream water right would not be injured as a result of the proposed changes in points of diversion.

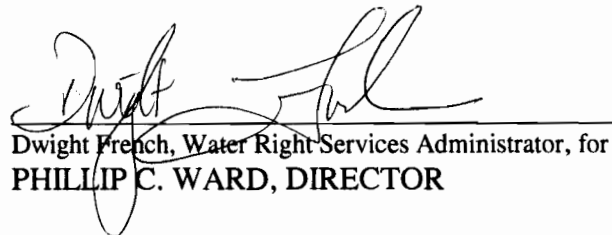
**Conclusions of Law**

The proposed changes in points of diversion due to government action in notification T-11611 are consistent with the requirements of ORS 540.510(6).

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

1. The changes proposed in T-11611 are approved and effective immediately.
2. 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 Certificates 13234, 12696, 13104, 13233, 13157, 76328, 13099, 12769, 13281, 12704, 13122, 13220 and 13219 and any related decree.
3. Water right Certificates 13234, 12696, 13104, 13233, 13157, 76328, 13099, 12769, 13281, 12704, 13122, 13220 and 13219 are cancelled. Confirming certificates will be issued to describe the changes in points of diversion for the rights included in T-11611. Remaining Right Certificates evidencing the portions of Certificates 76328, 12769, 13281 and 13220 NOT modified by this order shall also be issued.
4. The quantities of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.

Dated at Salem, Oregon this 16 day of August, 2013.

  
Dwight French, Water Right Services Administrator, for  
PHILLIP C. WARD, DIRECTOR

Mailing date: AUG 30 2013