

Use: IRRIGATION of 28.0 ACRES, domestic and stock use

Priority Date: 1875 for 12.7 acres and 1892 for 15.3 acres

Rate/Duty: The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.35 cubic feet per second, subject to the provisions of paragraph 33 of said decree and all other conditions and limitations contained in said decree.

Source: EAST BIRCH CREEK, tributary to the UMATILLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 S	32 E	WM	4	NE SE	- not specified on Certificate

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
2 S	32 E	WM	10	SW NE	15.0
2 S	32 E	WM	10	SE NE	3.0
2 S	32 E	WM	10	NE SE	10.0

4. Application T-11067 proposes to change the point of diversion to two points of diversion to reflect historic use. POD # 1 is approximately 6200 feet downstream and POD # 2 is approximately 7300 feet downstream from the original point of diversion.

Proposed Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 S	32 E	WM	10	NW SE	POD # 1 - GPS: N. 45.40550°, W. -118.79739°
2 S	32 E	WM	10	SW NE	POD # 2 - GPS: N. 45.40783°, W. -118.80042°

Re-description of Lands

5. Certificate 86723 was issued based on an order to amend the decree to correctly describe the place of use under a portion of Certificate 32154. Certificate 86723 now describes in the authorized place of use, among other lands, 3.0 acres within the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 10, Township 2 South, Range 32 East of Willamette Meridian, Umatilla County, Oregon.
- a. The transfer application differs from this description, being 1.5 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, and 1.5 acres within the NW $\frac{1}{4}$ SE $\frac{1}{4}$. The current Umatilla County tax assessor's map 2S 32 10, shows that this land is located between the road and the creek and has been in the same ownership for generations. The Government Land Office survey of 1864 describes the layout of the road and creek consistently with the original adjudication map prepared by the State Engineer for the Umatilla River decree, and is also consistent with the Umatilla assessor's office Tax Lot map for Section 10. These all lead the Department to conclude that the land to which the 3.0 acres of the right has always been appurtenant should be re-described as 1.5 acres in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, and 1.5 acres within the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 10, Township 2 South, Range 32 East of Willamette Meridian, Umatilla County, Oregon.
- b. The following table describes the place of use description in existing Certificate 86723, appurtenant to the Weinke's property, and a proposed re-description based on the findings above:

Original Description of Place of Use			Proposed Re-description of Place of Use		
Certificate	¼ - ¼	Acres	¼ - ¼	Estimated Acres	Current Tax Lot
86723	SW NE	15.0	SW NE	15.0 (1892)	2S 32 10 -100
86723	SE NE	3.0	SE NE	0.3 (1892) 1.2 (1875)	2S 32 10 -100
86723	NE SE	10.0	NE SE	10.0 (1875)	2S 32 10 -100
86723	NW SE	0.0	NW SE	1.5 (1875)	2S 32 10 -100
	TOTAL:	28.0	TOTAL:	28.0	
Township 2 South, Range 32 East, Section 10					

6. The applicant has provided information in the following table which specific lands, after the re-description, are to be irrigated from each POD as described above in Finding of Fact #5:

IRRIGATION, DOMESTIC AND STOCK USE						
Twp	Rng	Mer	Sec	Q - Q	Acres (Priority Date)	POD#
2 S	32 E	WM	10	SW NE	15.0 (1892)	#2
2 S	32 E	WM	10	SE NE	0.3 (1892)	#1
2 S	32 E	WM	10	SE NE	1.2 (1875)	#1
2 S	32 E	WM	10	NE SE	10.0 (1875)	#1
2 S	32 E	WM	10	NW SE	1.5 (1875)	#1

7. Notice of the application for transfer was published on May 4, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On January 20, 2012, the Department mailed a draft copy of the Final Order proposing to approve Transfer Application T-11067 to the applicant. The draft Final Order set forth a deadline of February 27, 2012, for the applicant to respond. On February 24, 2012, the applicants submitted a written response requesting the Department to proceed with issuance of a Final Order and provided the necessary information to demonstrate that they are authorized to pursue the transfer.
9. Pursuant to ORS 540.532 (2)(c) and 690-380-2120(3), the Department has determined there is an affected water right holder. This will require that proof of service by the applicant to the affected water right holder of the proposed transfer be sent to the Department. On January 31, 2012, the Department received a completed Proof of Service form that the mailing was performed on January 30, 2012.
10. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new points 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 not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

Transfer Review Criteria (OAR 690-380-4010 and ORS 540.532 and OAR 690-380-2120)

11. Pursuant to OAR 690-380-2120(2)(a), evidence has been submitted that the actual, current points of diversion for the water right in question have been in use for more than 10 years.
12. Pursuant to OAR 690-380-2120(2)(c) the Watermaster provided a statement that to his knowledge there has been no complaint of injury due to the use of water at the actual, current points of diversion, prior to the transfer request.
13. Pursuant to OAR 690-380-2120(2)(a), evidence has been submitted that the actual, current points of diversion for the water right in question, as described in Findings of Fact #4 and #6, have been in use for more than 10 years.
14. Pursuant to OAR 690-380-2120(2)(c), the Watermaster provided a statement on April 26, 2010, that to his knowledge there has been no complaint of injury due to the use of water at the actual, current points of appropriation, prior to the transfer request.
15. Pursuant to OAR 690-380-2120(3), the Department provided the applicant a list of an affected water right and a copy of the notice to be provided to the affected water right holder. The applicant has provided written proof of service of notice of the proposed transfer on the affected water right holder.
16. Water has been used within the last five years according to the terms and conditions of the right. There is no evidence available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
17. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
18. The proposed change would not result in enlargement of the right.
19. The proposed change would not result in injury to other water rights.

Conclusions of Law

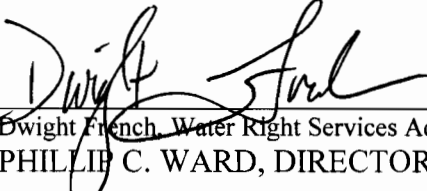
The proposed change in point of diversion to reflect historical use in application T-11067 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change proposed in T-11067 is 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 Certificate 86723 and any related decree.

3. Water right Certificate 86723 is cancelled. Certificate 87458 will be issued to describe the change in point of diversion for the portion of the right included in T-11067. Certificate 87459 shall be issued to describe the portion of Certificate 86723 not modified by this order. Together, the new Certificates shall supersede Certificate 86723.
4. The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
5. The original point of diversion shall not be retained as an additional or supplemental point of diversion under the transferred portion of the right. However, if within five years after approval of the transfer, the Department receives a transfer application to return to the last authorized surface water point of diversion, the application shall be approved.
6. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
7. Prior to October 1, 2013, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion. The water user shall maintain the meters or measuring devices in good working order. The water user shall allow the Watermaster access to the meters or measuring device; provided however, where the meters or measuring devices are located within a primary structure, the Watermaster shall request access upon reasonable notice.

Dated at Salem, Oregon this 13 day of March, 2012.


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

Mailing date: MAR 16 2012