

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-11080, Wallowa County) CHANGE IN POINT OF DIVERSION

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

Daryl and Amy Nobles
67275 Lostine River Road
Lostine, OR 97857

Agent

Bagett-Griffith & Blackman
2006 Adams Ave
LaGrande, OR 97850

Findings of Fact

Background

1. On May 26, 2010, Darryl and Amy Nobles filed an application to change the point of diversion under Certificate 3082. The Department assigned the application number T-11080.
2. The portion of the right to be transferred is as follows:
 - Certificate:** 3082 in the name of Jay and Edith Lewis, (confirmed by Wallowa River Decree)
 - Use:** IRRIGATION, LIVESTOCK AND DOMESTIC
 - Priority Date:** 1888
 - Acres:** 18.8 ACRES
 - Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of 1½ acre-feet per acre during any period of 30 days prior to July 31st of each year, and thereafter not to exceed 1.0 acre foot per acre during the entire

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, 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.

remainder of the irrigation season; and said right shall be subject to all other conditions and limitations contained in said decree.

Source: SOUTH FORK (aka LOSTINE FORK) OF WALLOWA RIVER, tributary to the WALLOWA RIVER

Authorized Place of Use:

IRRIGATION, LIVESTOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	43 E	WM	15	SW SE	18.8

3. Certificate 3082 does not identify the point of diversion. However, information available from the Certified Water Right Examiner and the decree maps indicate that the authorized point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q
1 S	43 E	WM	27	NE NW

4. Transfer Application T-11080 proposes to move the authorized point of diversion approximately 2.0 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	22	NW NE	LOSTINE DITCH: 881 FEET SOUTH AND 2546 FEET WEST FROM THE NE CORNER OF SECTION 22

5. Notice of the application for transfer was published on June 1, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On July 2, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11080 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 2, 2010, for the applicant to respond. 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 September 1, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11080 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 September 7, 2010, and in the Wallowa County Chieftain newspaper on October 28, November 4 and 11, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
8. The Oregon Department of Fish and Wildlife (ODFW) 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.

Transfer Review Criteria [OAR 690-380-4010(2)]

9. Water has been used within the last five years according to the terms and conditions of the right. 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 was present within the five-year period prior to submittal of Transfer Application T-11080.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

Conclusions of Law

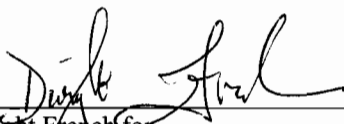
The change in point of diversion proposed in Transfer Application T-11080 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of diversion proposed in application T-11080 is approved.
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 3082 and any related decree.
3. Water right certificate 3082 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. 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.
5. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
6. The water user shall maintain the existing headgate and shall make such improvements as may be required by 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. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.
9. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 13 day of December, 2010.



Dwight French for
PHILLIP C. WARD, DIRECTOR

Mailing date: DEC 14 2010