

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

In the Matter of Transfer Application                    ) FINAL ORDER APPROVING A CHANGE  
T-11851, Umatilla County                                ) IN POINT OF DIVERSION

**Authority**

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

CITY OF MILTON-FREEWATER  
PO BOX 6  
MILTON FREEWATER, OR 97862

**Findings of Fact**

1. On June 23, 2014, the CITY OF MILTON-FREEWATER filed an application to change the point of diversion under Certificate 89058. The Department assigned the application number T-11851.
2. Notice of the application for transfer was published on July 1, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 18, 2015, the Department informed the applicant that the application was incomplete and requested the missing information be provided by March 20, 2015.
4. On February 27, 2015, the applicant provided the necessary materials to complete the application, resolving the deficiencies.
5. On June 1, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11851 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 1, 2015, for the applicant to respond.

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.

The applicant requested that the completion date be extended to October 1, 2020 and for the Department to proceed with issuance of the Preliminary Determination.

6. On July 22, 2015, the Department informed the applicant's agent that additional information was necessary to prove ownership of a portion (1.03 acres) of the place of use involved in Transfer Application T-11851. The letter set forth a deadline of August 7, 2015, to respond or the Department would issue a Preliminary Determination approving the application for the portion of which authorization to pursue the transfer was demonstrated. The applicant did not provide the requested information.
7. The applicant failed to demonstrate that they were authorized to pursue the transfer on 1.03 acres of the authorized place of use. The authorized place of use involved in the transfer has been reduced from 4.19 acres to 3.16 acres.
8. On October 5, 2015, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11851 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on October 6, 2015, and in the East Oregonian newspaper on October 8 and 15, 2015, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

**Certificate:** 89058 in the name of ELWOOD E. PIPER (confirmed by Walla Walla River Decree)  
**Use:** IRRIGATION of 3.16 ACRES  
**Priority Date:** 1885  
**Limit/Duty:** The amount of water to which this right is entitled for the purposes aforesaid, is limited to an amount beneficially used for said purpose and shall not exceed one and one-half miner's inches per acre measured at the point of diversion.  
**Source:** WALLA WALLA RIVER, in the COLUMBIA RIVER BASIN

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	35 E	WM	2	NW SE	3.16

10. Certificate 89058 does not describe the location of the point of diversion; however, the Watermaster provided the following description from the Walla Walla River Decree:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	18	SW NW	2220 FEET SOUTH AND 100 FEET EAST FROM THE NW CORNER OF SECTION 18

11. Transfer Application T-11851 proposes to move the authorized point of diversion approximately 1.1 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SW NE	1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER QUARTER CORNER OF SECTION 12

12. The Oregon Department of Fish and Wildlife has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is currently equipped with an appropriate fish screen.

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

13. Water has been used within the last five years.
14. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-11851.
15. The proposed change would not result in enlargement of the right.
16. The proposed change would not result in injury to other water rights.

**Conclusion of Law**

The change in point of diversion proposed in Transfer Application T-11851 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 Transfer Application T-11851 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 89058 and any related decree.
3. Water right Certificate 89058 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 right shall be subordinate to all other existing water rights on the Little Walla Walla River Diversion.

6. The water user shall operate and maintain an approved fish screen at the new point of diversion. If Oregon Department of Fish and Wildlife (ODFW) determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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.
8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 17 day of November, 2015.

  
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Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

Mailing date: NOV 19 2015