

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-9967, Umatilla 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

MATTHEW & SARAH ERLANDSON
2480 WALNUT STREET
MILTON-FREEWATER, OR 97862-1266

Findings of Fact

Background

1. On July 7, 2005, Thomas and Peggy Sallee filed an application to change the point of diversion under Certificate 83333. The Department assigned the transfer application number T-9967. On December 16, 2009, the transfer file was assigned to the new landowners, Matthew and Sarah Erlandson.

2. The right to be transferred is as follows:
 - Certificate:** 83333 in the name of THOMAS SALLEE (confirmed by the Walla Walla River Decree)
 - Use:** IRRIGATION of 4.5 ACRES
 - Priority Date:** 1894
 - Limit/Duty:** The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed ONE AND ONE-HALF MINER'S INCHES per acre provided the total diverted does not exceed 0.11 CUBIC FOOT PER SECOND, or its equivalent in case of rotation, measured at the point of diversion from the source.

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.

Source: WALLA WALLA RIVER, tributary to the SNAKE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	
5 N	36 E	WM	18	SW NW	Milton Ditch

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
5 N	35 E	WM	13	NE NE	2.28
5 N	35 E	WM	13	SE NE	2.22
TOTAL:					4.50

3. Transfer Application T-9967 proposes to change the point of diversion downstream approximately 1100 feet to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
5 N	35 E	WM	13	SE NE	1330 FEET SOUTH AND 165 FEET WEST FROM THE NE CORNER OF SECTION 13

4. Notice of the application for transfer was published on July 19, 2005, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
5. On November 17, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9967 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of December 16, 2009, for the applicants to respond. The new landowners reviewed the document, filed the appropriate paperwork for assignment to the Department, and subsequently, as the new applicants, requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that they are authorized to pursue the transfer.
6. On January 9, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-9967 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on January 12, 2010, pursuant to ORS 540-520 and OAR 690-380-4020. No protests were filed in response to the notice.
7. 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 not currently equipped with an appropriate fish screening and/or by-pass device.
8. Certificate 83333 incorrectly describes the Walla Walla River as being tributary to the Snake River. The Walla Walla River is tributary to the Columbia River.

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

9. Water has been used within the five-year period prior to submittal of the transfer application 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-9967.
11. The proposed change would not result in enlargement of the right.
11. 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-9967 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

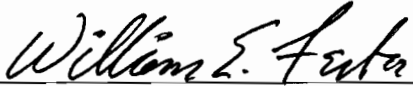
Now, therefore, it is ORDERED:

1. The change in point of diversion proposed in application T-9967 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 83333 and any related decree.
3. Water right certificate 83333 is cancelled.
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. Before water use may begin under this order, the water user shall install a flow meter, or, with prior approval of the Director, another suitable measuring device, at the new point of diversion. The water user shall maintain the meter or measuring device in good working order. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
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. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state'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. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. A Claim of Beneficial Use prepared by a Certified Water Rights 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. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 11th day of February 2010.



PC
Phillip C. Ward, Director

Mailing Date: FEB 16 2010