

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-11128, Jackson 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

PATRICIA A. WHITNEY
REGINA HOFFMAN
9500 SOUTH FORK LITTLE BUTTE CR RD
EAGLE POINT, OR 97524

Agent

ROBERT C. JONES
200 FIRST STREET
PROSPECT, OR 97536

Findings of Fact

Background

1. On September 8, 2010, PATRICIA A. WHITNEY AND REGINA HOFFMAN filed an application to change the point of diversion under Certificate 17177. The Department assigned the application number T-11128.
2. The portion of the right to be transferred is as follows:
 - Certificate:** 17177 in the name of W. P. FARLOW (confirmed by Little Butte Creek Decree, 1949)
 - Use:** IRRIGATION of 9.0 ACRES
 - Priority Date:** MAY 1, 1900
 - Rate:** 0.21 CUBIC FOOT PER SECOND, measured at the head of the ditch or the point where the same leaves the natural stream
 - Period of Use:** APRIL 1 TO OCTOBER 1
 - Source:** SOUTH FORK LITTLE BUTTE CREEK, tributary to LITTLE BUTTE CREEK

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.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	2 E	WM	13	NE NE	5.2
37 S	2 E	WM	13	SE NE	3.8

3. Certificate 17177 does not describe the location of the point of diversion, however information is available from the Certified Water Right Examiner indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	3 E	WM	18	SW NW	SOUTH 1584 FEET AND EAST 660 FEET FROM THE NW CORNER OF SECTION 18

4. Transfer Application T-11128 proposes to move the authorized point of diversion approximately 1260 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	2 E	WM	13	SE NE	SOUTH 1784 FEET AND WEST 600 FEET FROM THE NE CORNER OF SECTION 13

5. Notice of the application for transfer was published on September 14, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On October 18, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11128 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of November 15, 2010, for the applicants to respond. The applicants 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 November 3, 2010, a Preliminary Determination was issued.
8. On November 10, 2010, an Amended Preliminary Determination was issued to correct a scrivener's error in the section of the proposed point of diversion.
9. On November 18, 2010, the Department issued a 2nd Amended Preliminary Determination correcting a scrivener's error in the range of the proposed point of diversion and proposing to approve Transfer Application T-11085 and mailed a copy to the applicant. Additionally, notice of the 2nd Amended Preliminary Determination for the transfer application was published on the Department's weekly notice on November 23, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
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 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. This diversion may be eligible for screening cost share funds.

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

11. 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.
12. 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-11128.
13. The proposed change would not result in enlargement of the right.
14. 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-11128 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

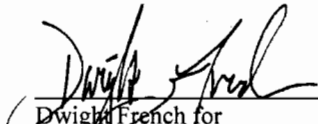
Now, therefore, it is ORDERED:

1. The change in point of diversion proposed in Transfer Application T-11128 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 17177 and any related decree.
3. Water right certificate 17177 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. Water use measurement conditions:
 - a. Before water use may begin under this order, 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.
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. 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, 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.
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 28 day of December, 2010.



Dwight French for
PHILLIP C. WARD, DIRECTOR

Mailing date: DEC 30 2010