

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-11219, 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

DAVID AND DEBORAH HANSEN
84599 HIGHWAY 339
MILTON FREEWATER, OR 97862

Findings of Fact

Background

1. On March 31, 2011, David and Deborah Hansen filed an application to change the point of diversion under Certificate 12806. The Department assigned the application number T-11219.
2. Notice of the application for transfer was published on April 5, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 26, 2012, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11219 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of February 25, 2012, for the applicants to respond. The applicants did not respond by the deadline. On March 27, 2012, a staff member contacted the applicants and they asked for more time to respond.
4. Subsequent communications occurred on April 9, May 21, July 23 and August 23 of 2012, and April 2, May 14, May 16 and May 17, 2013.

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.

5. On May 24, 2013, the applicants requested to pursue issuance of a Preliminary Determination, consistent with the draft, and indicated they were working with a title company to obtain an ownership report, and wished the newspaper notice to be published in the Milton-Freewater Valley Herald.
6. On June 3, 2013, the applicants provided documentation of ownership of the property to which the water right is appurtenant.
7. On June 11, 2013, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11219 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 June 18, 2013, and in the Valley Herald newspaper on July 19 and 26, and August 2, 2013, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

Certificate: 12806 in the name of J.S. HURST (confirmed by Walla Walla River Decree)
Use: irrigation of 2.5 acres
Priority Date: 1872
Limit/Duty: that the amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.9 miner's inches per acre measured at the point of diversion
Source: Little Walla Walla River

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 5 N | 35 E | WM | 1 | SW NW | 2.5 |

9. The quantity of water to be transferred is 0.9 miner's inches per acre which is equivalent to 10.43 gallons per minute (GPM) for the 2.5 acres.
10. Certificate 12806 does not describe the location of the point of diversion, however information is available from the transfer application map indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|-----|------|-----|-----|-------|--|
| 5 N | 35 E | WM | 1 | SE SW | 130 FEET NORTH AND 315 FEET WEST FROM THE S¼ CORNER OF SECTION 1 |

11. Transfer Application T-11219 proposes to move the authorized point of diversion approximately 4600 feet downstream to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 5 N | 35 E | WM | 1 | SW NW | 545 FEET NORTH AND 105 FEET EAST FROM THE W¼ CORNER OF SECTION 1 |

12. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen may be required in the future at the new point of diversion to prevent fish from entering the diversion, and that the diversion is not currently equipped with an appropriate fish screen.
13. The transfer requires a loss factor method be applied to prevent injury to other water right holders. The distance involved between the original and proposed points of diversion is less than 1 mile. Best estimates indicate a loss factor of about 1.0 percent would be appropriate to apply. This breaks down as follows:

1.0 percent times 10.43 GPM available equals 0.1 GPM total loss between the original and proposed points of diversion. 10.43 GPM minus 0.1 GPM equals 10.33 GPM available to pump at the proposed POD.

If the actual loss rate is determined to be different than the 1.0 percent than applied in this mitigation analysis, the actual loss rate will be adjusted accordingly.

14. Certificate 12806 describes the authorized place of use as 4.04 acres in the SWNW of Section 1, Township 5 North, Range 35 East, WM Meridian, Umatilla County, Oregon.
 - a. The transfer application depicts the place of use under Certificate 12806 as being 3.20 acres in the SWNW and 0.84 acres in the NWNW of Section 1, Township 5 North, Range 35 East, WM Meridian, Umatilla County, Oregon.
 - b. Based on current understanding of how the Public Land Survey subdivisions overlie the surveyed land, this area is located as follows: 3.20 acres in the SWNW and 0.84 acres in the NWNW. The footprint of the right appears consistent with the original adjudication map prepared by the State Engineer, leading the Department to conclude that the land to which the right has always been appurtenant should be re-described.
 - c. The following table lists the place of use as described in existing Certificate 12806 and a proposed re-description based on the above findings:

| Original Description of Place of Use | | Proposed Re-Description of Place of Use | |
|--------------------------------------|-------|---|-------|
| ¼-¼ | Acres | ¼-¼ | Acres |
| SW NW | 4.04 | SW NW | 3.20 |
| | | NW NW | 0.84 |
| Township 5 N, Range 35 E, Section 1 | | | |

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

15. 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.
16. A diversion structure and ditch, pipeline and sprinkler system 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-11219.
17. The proposed change, as conditioned, would not result in enlargement of the right.

18. The proposed change, as conditioned, would not result in injury to other water rights.

Conclusions of Law

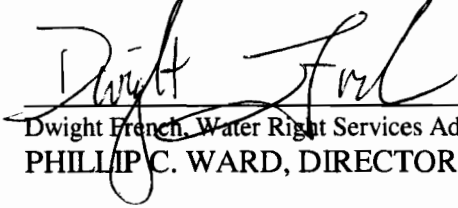
The change in point of diversion proposed in Transfer Application T-11219, as conditioned to incorporate a loss factor, is consistent with the requirements of ORS 540.

Now, therefore, it is ORDERED:

1. The change in point of diversion proposed in application T-11219 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 12806 and any related decree.
3. Water right Certificate 12806 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer, consistent with the re-description.
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 minus a loss factor estimated to be 1%. The resulting diversion rate, assuming a 1% loss, is 10.33 gpm.
5. Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.
6. The Director may require the water user to install a totalizing flow meter or other suitable measuring device at the point of diversion. If the Director notifies the water user to install a totalizing flow meter or other measuring device, the water user shall install such device specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meter or measuring device in good working order and shall allow the Watermaster access to the meters or measuring device.
7. The Oregon Department of Fish and Wildlife (ODFW) may require the water user to install an approved fish screen at the new point of diversion within one year after receiving written notification that a fish screen is required. Once installed the water user shall maintain and operate the fish screen at the new point of diversion according to ODFW's operational and maintenance standards. If 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.

8. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2014**. 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 11 day of September, 2013.



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

Mailing date: SEP 12 2013