

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

In the Matter of Transfer Application            )     FINAL ORDER APPROVING A  
T-11662, Coos 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**

STEVEN HEBERT  
14982 HWY 42  
MYRTLE POINT, OR 97458-9834

**Findings of Fact**

1. On September 5, 2013, STEVEN HEBERT filed an application to change the point of diversion under Certificate 6424. The applicant filed using an "Application for Water Right Exchange." The Department assigned the application number T-11662.
2. Notice of the application for transfer was published on September 17, 2013, pursuant to OAR 690-380-4000. One comment, by L. Sue Powrie, was filed in response to the notice.
3. Issues raised in the comment included the following:
  - a) Concern that the diameter of the pipeline (the water delivery system) was inaccurately stated in the transfer application, implying that water has reached the end of the pipeline year-round for the life of the right.
  - b) Additional storage tanks have been added to the delivery system over the last four years, showing that insufficient water was available for all users.
  - c) The water delivery system crosses Powrie's property to get to the applicant's property. Powrie will not grant access to the applicant's to her property if the transfer is approved.
  - d) A new pipeline would need to be constructed that would be partially on State of Oregon highway right-of-way.

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.

- e) Concern that the transfer will diminish the applicant's personal and financial responsibility to inspect, maintain and repair the pipeline in accordance with a 1926 water rotation agreement. This would set a precedent for other parties of the water rotation agreement to possibly separate from the agreement thus increasing responsibility of the remaining parties.
4. None of the issues raised by the commenter are relevant to the criteria for review of a water right transfer as per OAR 690-380-4010. The issues noted in Finding of Fact #3, though important to L. Sue Powrie, do not directly relate to the transfer review criteria.
  5. On January 31, 2014, the Department requested by written correspondence that the application be re-submitted on an "Application for Permanent Water Right Transfer." The application was received on the correct form on March 24, 2014.
  6. On May 12, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11662 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 12, 2014, 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 May 16, 2014, the Department sent a revised copy of the draft Preliminary Determination proposing to approve Transfer Application T-11662 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 16, 2014, 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.
  8. On June 18, 2014, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11662 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 June 20, 2014, and in Coos Bay's The World newspaper on June 24 and July 1, 2014, 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:** 6424 in the name of T. M. STOVER, G. H. GUERIN, JR, J. T. GUERIN, E. M. HOFFMAN, AND E. F. HOFFMAN (perfected under Permit S-2346)
    - Use:** DOMESTIC USE
    - Priority Date:** JANUARY 15, 1915
    - Rate:** 0.018 CUBIC FOOT PER SECOND
    - Source:** SPRING NO. 1 AND SPRING NO. 2, tributary to MILL CREEK

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
29 S	12 W	WM	23	NW NE
29 S	12 W	WM	23	NW NE

**Authorized Place of Use:**

DOMESTIC				
Twp	Rng	Mer	Sec	
29 S	12 W	WM	22	
29 S	12 W	WM	23	
29 S	12 W	WM	27	

10. Information is available from the applicant that further describes the authorized points of diversion being located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
29 S	12 W	WM	23	NW NE	SOUTH 50 DEGREES 30 MINUTES AND EAST 548 FEET FROM THE NORTH ¼ CORNER OF SECTION 23

11. Transfer Application T-11662 proposes to move the authorized point of diversion approximately 1.66-1.72 miles from the two springs downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
29 S	12 W	WM	27	NW NW	880 FEET SOUTH AND 1280 FEET EAST OF THE NW CORNER OF SECTION 27

12. The Oregon Department of Fish and Wildlife (ODFW) 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 not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

13. 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.
14. A pump, 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-11662.
15. The proposed change, as conditioned, would not result in enlargement of the right.
16. 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-11662 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

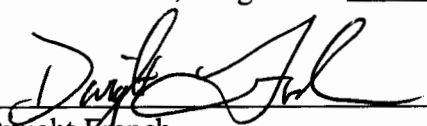
### Now, therefore, it is ORDERED:

1. The change in point of diversion proposed in Transfer Application T-11662 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 6424 and any related decree.
3. Water right Certificate 6424 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 points 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 new 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 an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new point of diversion consistent with 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.
6. The water user had agreed to install a flow restrictor at the new point of diversion by October 1, 2015. The work shall be done under the general supervision of the Department.
7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2015**. 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 20 day of August, 2014.

  
\_\_\_\_\_  
Dwight French  
Water Right Services Administrator, for  
Director  
Oregon Water Resources Department

Mailing Date: SEP 04 2014

