

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10986, Deschutes 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

CRAIG AND PATRICIA A. APREGAN
PO BOX 2184
SISTERS, OR 97759

Findings of Fact

Background

1. On December 14, 2009, CRAIG AND PATRICIA A. APREGAN filed an application to change the point of diversion under Certificates 85970 and 81477. The Department assigned the application number T-10986.
2. Additional documentation was received on March 30, 2010, and revisions to the application map were received on March 31, 2010.
3. The first right to be transferred is as follows:

Certificate: 85970 in the name of CRAIG APREGAN (confirmed by Squaw Creek [Whychus Creek] decree)

Use: IRRIGATION OF 4.7 ACRES

Priority Date: NOVEMBER 1904

Rate: 0.094 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of

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.

ONE-FIFTIETH of one cubic foot per second, or its equivalent for each acre irrigated during the irrigation season of each year.

Source: WHYCHUS CREEK, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	28	SW SE	PLAINVIEW DITCH - 710 FEET NORTH AND 2640 FEET WEST FROM THE SE CORNER OF SECTION 28

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	26	NW SE	4.7

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

Certificate: 81477 in the name of WELDON WANKIER (confirmed by Squaw Creek [Whychus Creek] decree)

Use: IRRIGATION OF 12.3 ACRES

Priority Date: NOVEMBER 1904

Rate: 0.245 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FIFTIETH of one cubic foot per second, or its equivalent for each acre irrigated during the irrigation season of each year.

Source: WHYCHUS CREEK, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	28	SW SE	PLAINVIEW DITCH - 710 FEET NORTH AND 2640 FEET WEST FROM THE SE CORNER OF SECTION 28

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	26	SE NW	2.8
15 S	10 E	WM	26	NE SE	9.5

5. Both Certificates 85970 and 81477 describe the authorized point of diversion as:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	28	SW SE	PLAINVIEW DITCH - 710 FEET NORTH AND 2640 FEET WEST FROM THE SE CORNER OF SECTION 28

- a. The transfer application depicts the authorized point of diversion as being 710 FEET NORTH AND 2640 FEET WEST FROM THE SW CORNER, SECTION 28.

- b. This description is consistent with the Claim of Beneficial Use Map for Certificate 85970, and places the point of diversion in Section 29, leading the Department to conclude that the point of diversion should be re-described as: 710 FEET NORTH AND 2640 FEET WEST FROM THE SE CORNER, SECTION 29.
- c. The following table shows the corrected location of the point of diversion based on the above findings:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	29	SW SE	PLAINVIEW DITCH - 710 FEET NORTH AND 2640 FEET WEST FROM THE SE CORNER OF SECTION 29

6. Transfer Application T-10986 proposes to move the authorized point of diversion approximately 1.5 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	21	SW SW	998 FEET NORTH AND 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

7. Notice of the application for transfer was published on December 29, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On March 10, 2010, the Department contacted the applicants by written correspondence to notify the agent of deficiencies in the application. The Department requested that the deficiencies be resolved by April 12, 2010.
9. Responses to the Department's request were submitted by the applicant's agent in an e-mail message dated March 30, 2010, and in mail correspondence received by the Department on March 31, 2010. These submittals addressed the issues raised in the deficiency letter and included a revised transfer application map.
10. On April 13, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10986 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 14, 2010, 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.
11. On May 7, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10986 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 May 11, 2010, and in The Bulletin newspaper on May 13, 20 and 27, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

12. The proposed point of diversion is the Three Sisters Irrigation District (TSID) canal diversion on Wychus Creek. The diversion structure includes an adequate measuring device which is maintained and monitored by TSID.
13. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the proposed 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 currently equipped with an appropriate fish screening and/or by-pass device maintained by TSID.

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

14. 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 rights are subject to forfeiture under ORS 540.610.
15. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-10986.
16. The proposed change would not result in enlargement of the rights.
17. The proposed change would not result in injury to other water rights.

Conclusions of Law

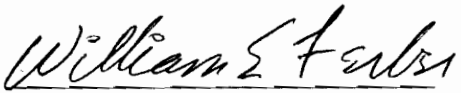
The change in point of diversion proposed in Transfer Application T-10986 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of diversion proposed in Transfer Application T-10986 is approved.
2. Water right certificates 85970 and 81477 are cancelled. A new certificate will be issued describing that portion of Certificate 81477 not affected by this transfer.
3. 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 Certificates 85970 and 81477 and any related decree.
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 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.

6. When satisfactory proof of the completed change is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 29th day of June 2010.


for Phillip C. Ward, Director

Mailing date: JUL 01 2010