

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

In the Matter of Transfer Application                    )     **FINAL ORDER APPROVING A**  
T-11980, Linn County                                    )     **CHANGE IN POINT OF DIVERSION**

**Authority**

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicants**

**JAMES AND KATHRYN FLEISHMAN**  
34466 BREWSTER RD  
LEBANON, OR 97355

**Findings of Fact**

1. On February 9, 2015, JAMES AND KATHRYN FLEISHMAN filed an application to change the point of diversion under Certificate 89407. The Department assigned the application number T-11980.
2. Notice of the application for transfer was published on February 17, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 6, 2015, the Department contacted the applicants Certified Water Right Examiner (CWRE) by written correspondence to notify them of a deficiency in the application, being the location of the proposed point of diversion had to be clarified. On May 6, 2015, the CWRE responded, resolving the deficiency.
4. On May 8, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11980 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of June 7, 2015, 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 applicants are authorized to pursue the transfer.

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 14, 2015, the Department issued a Preliminary Determination proposing to approve Transfer T-11980 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 19, 2015, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

6. The right to be transferred is as follows:

**Certificate:** 89407 in the name of JIM FLEISHMAN (perfected under Permit S-51923)  
**Use:** IRRIGATION of 41.1 ACRES  
**Priority Date:** DECEMBER 23, 1992  
**Rate:** 0.51 CUBIC FOOT PER SECOND FROM RIVER, and 92.2 ACRE- FEET STORED WATER ONLY  
**Limit/Duty:** The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Period of Use:** Stored water: APRIL 1 to SEPTEMBER 30 WITH USBOR CONTRACT, Live stream flow: APRIL 1-30 and OCTOBER 1-31  
**Source:** SOUTH SANTIAM RIVER AND WILLAMETTE BASIN PROJECT RESERVOIRS, UNDER PERMIT R-5363, tributaries of SANTIAM RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
11 S	2 W	WM	25	NE NW	SOUTH SANTIAM RIVER - SOUTH 47 DEGREES 30 MINUTES WEST, 625 FEET FROM THE NORTH 1/4 CORNER OF SECTION 25

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
11 S	2 W	WM	25	NE NE	0.1
11 S	2 W	WM	25	NW NE	39.8
11 S	2 W	WM	25	SW NE	1.2

7. Transfer Application T-11980 proposes to move the authorized point of diversion approximately 511 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
11 S	2 W	WM	25	NE NW	SOUTH 83 DEGREES 15 MINUTES WEST, 148 FEET FROM THE NORTH 1/4 CORNER OF SECTION 25

8. 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)]***

9. 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.
10. 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-11980.
11. The proposed change would not result in enlargement of the right.
12. 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-11980 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-11980 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 89407 and any related decree.
3. Water right Certificate 89407 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. 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. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. 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.
7. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 22 day of June, 2015.



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Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

Mailing date: JUN 24 2015