

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

In the Matter of Transfer Application)
T-11100, Baker County)
)
) FINAL ORDER APPROVING A CHANGE
) IN POINT OF DIVERSION TO REFLECT
) HISTORIC USE

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

John and Dorothy Randall
42866 New Bridge Rd
Richland, OR 97870

Agent

Rock Randall
42742 New Bridge Rd
Richland, OR 97870

Findings of Fact

Background

1. On July 1, 2010, John and Dorothy Randall filed a transfer application for authorization of a historic point of diversion under Certificate 44243. The Department assigned the application number T-11100.

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

Certificate: 44243 in the name of Samuel Gover Estate, Mattie, Carson, Vina & Woody Gover (confirmed by Powder River Decree)
Use: IRRIGATION of 8.0 ACRES
Priority Date: 1888
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-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated during the irrigation season of each year.
Source: EAGLE CREEK, tributary to the POWDER RIVER

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, 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
9 S	45 E	WM	10	NE SW	8.0

3. Certificate 44243 does not describe the location of the point of diversion, however information is available from the transfer application and map that indicates that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	45 E	WM	3	NW SW	HOLSTINE DITCH: 2060 FEET NORTH AND 610 FEET EAST FROM THE SW CORNER OF SECTION 3

4. Transfer Application T-11100 proposes to move the point of diversion (POD) to reflect historic use approximately 2.8 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	45 E	WM	10	SE NW	KAY YOUNG DITCH: 1700 FEET SOUTH AND 2450 FEET EAST FROM THE NW CORNER OF SECTION 10

5. Notice of the application for transfer was published on July 6, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. 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. Listed fish species are not present at the point of diversion, the originating water right diversion is not screened, cost-share funds are not currently available, and the proposed diversion may be eligible for ODFW's cost-share program. A grace period of two years is appropriate until such time as cost share funds become available to assist in the construction of a fish screening and/or by-pass device. If cost share funds do not become available, the water user must screen within the indicated time period regardless of the availability of cost share funding.

Transfer Review Criteria (ORS 540.532 and OAR 690-380-2120)

7. Pursuant to OAR 690-380-2120(2)(a), evidence has been submitted that the actual, current point of diversion for the water right in question, as described in Finding No. 4, has been in use for more than 10 years.
8. Pursuant to OAR 690-380-2120(2)(c), the Watermaster provided a statement that to their knowledge there has been no complaint of injury due to the use of water at the actual, current point of diversion, prior to the transfer request.

9. Pursuant to OAR 690-380-2120(3), the Department provided the applicant a list of the affected water rights and a copy of the notice to be provided to each affected water right holder. The applicant has provided written proof of service of notice of the proposed transfer on all affected water right holders.
10. Water has been used within the last five years according to the terms and conditions of the right. There is no evidence available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
11. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

Conclusions of Law

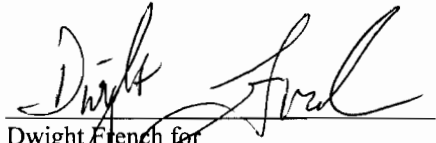
The proposed change in point of diversion to reflect historical use in application T-11100 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change proposed in T-11100 is approved and effective immediately.
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 44243 and any related decree.
3. Water right certificate 44243 is cancelled. Certificate 86796 will be issued to describe the change in point of diversion for the portion of the right included in T-11100. Certificate 86797 shall be issued to describe the portion of Certificate 44243 not modified by this order. Together, the new Certificates shall supersede Certificate 44243.
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 water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
6. The water user shall maintain the existing headgate and shall make such improvements as may be required by the Department.
7. Within two years after the date of this order, 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. The water user may withdraw water at

the new point of diversion without screening or by-pass devices until two years after the date of this order. 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.

Dated at Salem, Oregon this 24 day of January, 2011.


Dwight French for
PHILLIP C. WARD, DIRECTOR

Mailing date: JAN 25 2011