

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10509, 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

Scott Hendricks
P.O. Box 293
Milton-Freewater, OR 97862

Agent

William Porfily
P.O. Box 463
Stanfield, OR 97875

Findings of Fact

Background

1. On December 24, 2007, Scott Hendricks filed an application to change the point of diversion under Certificate 1736. The Department assigned the application number T-10509.
2. The portion of the right to be transferred is as follows:

Certificate: 1736 in the name of MARIA HALVERSON (confirmed by the Middle Mud Creek Decree)

Use: IRRIGATION of 20.8 ACRES, LIVESTOCK AND DOMESTIC

Priority Dates: 1893 for 2.3 acres and 1896 for 18.5 acres

Rate: 0.257 CUBIC FOOT PER SECOND (cfs)

Source: MIDDLE BRANCH OF MUD CREEK, tributary to the EAST BRANCH OF MUD CREEK

Authorized Place of Use:

IRRIGATION, LIVESTOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	20	NE NE	20.8

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.

- Certificate 1736 does not describe the location of the authorized point of diversion, however information is available from the Certified Water Rights Examiner (CWRE) and the applicant indicating that the authorized point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 N	35 E	WM	20	NE NE	1280 FEET SOUTH AND 30 WEST FROM THE NE CORNER OF SECTION 20

- Certificate 1736 also does not describe the duty of the right, however information is available in the State Water Board, Middle Branch Mud Creek Decree dated July 16, 1917 indicating that the rate shall not exceed one-fourtieth (1/40) of a cubic foot per second.
- Transfer Application T-10509 proposes to move the authorized point of diversion approximately 1200 feet downstream in the source to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 N	35 E	WM	20	NE NE	40 FEET SOUTH AND 30 FEET WEST FROM THE NE CORNER OF SECTION 20

- Notice of the application for transfer was published on January 8, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- Transfer Application T- 10509 proposes to change a point of diversion for the portion of a water right, Certificate 1736, that is within the boundaries of Hudson Bay District Improvement Company. The district was notified of the proposed change in point of diversion and did not provide any comments.
- On March 25, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10509 to the applicant. The cover letter that accompanied the draft Preliminary Determination set forth a deadline of April 28, 2008, for the applicant to respond with comments. 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.
- On June 3, 2008, the Department issued a Preliminary Determination proposing to approve Transfer T-10509 and mailed 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 10, 2008, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
- The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device may be required in the future 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.

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

11. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
12. 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 Application T-10509.
13. The proposed change would not result in enlargement of the right.
14. 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-10509 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 application T-10509 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 1736 and any related decree.
3. Water right Certificate 1736 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 point of diversion.
5. Within one year after receiving written notification from the Oregon Department of Fish and Wildlife (ODFW) that a fish screening and/or by-pass device is required, the water user shall install a screening and/or by-pass device, as appropriate, at the new point of diversion. The fish screening and/or by-pass device must meet ODFW's design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screening and/or by-pass device meets ODFW's criteria. Once installed the water user shall maintain and operate the fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
6. When required by the Department, the water user shall install, maintain and operate an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

7. When required by the Department, the water user shall install, maintain and operate 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.
8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2009**. 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 changes 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 21ST day of July, 2008.



Phillip C. Ward, Director *PC*

Mailing date: JUL 25 2008