

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

In the Matter of Transfer Application) FINAL ORDER
T-12033, Umatilla County) APPROVING ADDITIONAL POINTS
) OF DIVERSION AND A CHANGE IN
) PLACE OF 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

MARK AND SANDRA EASLEY
648 SW 44TH STREET
PENDLETON OR 97801

Agent

BILL PORFILY
PO BOX 643
STANFIELD OR 97875

Findings of Fact

1. On April 13, 2015, MARK AND SANDRA EASLEY filed an application for additional points of diversion and to change the place of use under Certificate 86829 and Permit S-7400. The Department assigned the transfer application number T-12033.
2. Notice of the application for transfer was published on April 28, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 31, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12033 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of June 30, 2016, 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.

4. On October 6, 2016, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12033 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on October 11, 2016, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

5. The primary water right and its layered supplemental right to be transferred are as follows:

Certificate: 86829 in the names of WILLIAM M. AND LALANI L. ANDERSON
(perfected under Permit S-12309)
Use: IRRIGATION OF 6.5 ACRES
Priority Date: August 14, 1936
Rate: 0.057 CUBIC FOOT PER SECOND (cfs), if available at the original point of diversion, NE¼ NW¼, Sec. 21, T2N, R32E, WM.
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 ACRE-FEET per acre for each acre irrigated during the irrigation season of each year.
Source: MCKAY CREEK, tributary of the UMATILLA RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|---|
| 2 N | 32 E | WM | 16 | NW NW | 585 FEET SOUTH AND 840 FEET EAST FROM THE NW CORNER OF SECTION 16 |

Permit: Permit S-7400 in the name of U.S. BUREAU OF RECLAMATION
(application S-9668)
Use: SUPPLEMENTAL IRRIGATION OF 6.5 ACRES
Priority Date: July 1, 1924
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-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 ACRE-FEET per acre for each acre irrigated during the irrigation season of each year.
Source: MCKAY RESERVOIR, tributary of MCKAY CREEK. Water is run down the natural channel of McKay Creek and is re-diverted at the applicant's point of diversion described under Bureau of Reclamation contract.

Authorized Point of Diversion and Point of Re-Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 2 N | 32 E | WM | 34 | NW SE | MCKAY DAM |
| 2 N | 32 E | WM | 16 | NW NW | RE-DIVERSION - 585 FEET SOUTH AND 840 FEET EAST FROM THE NW CORNER OF SECTION 16 |

Authorized Places of Use:

| IRRIGATION (IR) AND SUPPLEMENTAL IRRIGATION (IS) | | | | | | |
|--|------|-----|-----|-------|------------------------------|-----------------------|
| | | | | | Water Rights/Acres (changes) | |
| Twp | Rng | Mer | Sec | Q - Q | 86829 (IR) | Per. S-7400 (IS) |
| 2 N | 32 E | WM | 16 | NW NW | 1.5 (POU/Addt'l PODs) | 1.5 (POU/Addt'l PODs) |
| 2 N | 32 E | WM | 16 | NW NW | 5.0 (Addt'l PODs) | 5.0 (Addt'l PODs) |
| Total | | | | | 6.5 acres | 6.5 acres |

6. Transfer application T-12033 proposes two additional points of diversion, one upstream approximately 240 feet and the other downstream approximately 625 feet for the above described rights. The additional points of diversion are located as follows:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 2 N | 32 E | WM | 16 | NW NW | POD #1 - 810 FEET SOUTH AND 880 FEET EAST FROM THE NW CORNER OF SECTION 16 |
| 2 N | 32 E | WM | 16 | NW NW | POD #2 - 780 FEET SOUTH AND 50 FEET EAST FROM THE NW CORNER OF SECTION 16 |

6. Transfer Application T-12033 also proposes to change the place of use of 1.5 acres of both rights within the same Tax Lot 902 but to elsewhere within the same quarter quarter located:

| IRRIGATION (IR) AND SUPPLEMENTAL IRRIGATION (IS) | | | | | | |
|--|------|-----|-----|-------|------------|------------------|
| Twp | Rng | Mer | Sec | Q-Q | 86829 (IR) | Per. S-7400 (IS) |
| 2 N | 32 E | WM | 16 | NW NW | 1.5 | 1.5 |

7. Oregon Department of Fish and Wildlife (ODFW) has determined that fish screens are necessary at the new points of diversion to prevent fish from entering the diversions and that the diversions are not currently equipped with appropriate fish screens. These diversions may be eligible for screening cost-share funds.

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

8. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
9. A diversion structure, pump, pipeline, and sprinkler system 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-12033.
10. The proposed changes would not result in enlargement of the rights.
11. The proposed changes would not result in injury to other water rights.

Conclusions of Law


The additional points of diversion and changes in place of use proposed in Transfer Application T-12033 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The additional points of diversion and changes in place of use proposed in Transfer Application T-12033 are 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 86829 and any related decree.
3. Water right certificate 86829 is cancelled.
4. Permit S-7400 is modified. The Department will issue a superseding certificate describing the right when it is determined that it is necessary for record keeping.
5. The quantity of water diverted at the new additional points of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
6. In order to prevent enlargement and address the same source issue (OAR 690-380-2110 (2)), the Department requires the water user to limit the proposed diversion structure at POD #2 for direct pumping of McKay Creek water only and shall by-pass all water arising from the spring area to natural flow unimpeded into McKay Creek. There shall be no appropriation of water from the spring source.
7. 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(s) or measuring device(s) in good working order.
 - c. The water user shall allow the Watermaster access to the meter(s) or measuring device(s); provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
8. Prior to diverting water, the water user shall install approved fish screens at the new points of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screens meet the state's criteria, or that ODFW has determined a screen is not necessary. The water user shall operate and maintain the fish screens at the new points of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screens are 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(s) are functioning properly.

9. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2018**. 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.
10. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 14 day of November, 2016.



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

Mailing date: NOV 17 2016