

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING AN
T-7742, Wallowa County)	ADDITIONAL POINT OF DIVERSION TO
)	REFLECT HISTORIC USE AND PARTIAL
)	CANCELLATION OF A WATER RIGHT

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicants

Kim and Mary Werst	John Baker
75365 Lower Diamond Ln	C/O Baker Revocable Trust
Wallowa, OR 97885	P.O. Box 187
	Wallowa, OR 97885

Wayne Werst	Norman Werst
75545 Lower Diamond Ln	74822 Lower Diamond Ln
Wallowa, OR 97885	Wallowa OR 97885

Findings of Fact

Background

1. On April 11, 1997, Norman Werst filed a transfer application for a change in point of diversion under Certificates 9125, 45005 and 45008. The Department assigned the application number T-7742.
2. On January 12, 2011, Norman Werst requested that the transfer application be modified to include the additional owners of the lands involved in transfer T-7742 and submitted a modified application and map to change the point of diversion to reflect a historic use.

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.

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

Certificate: 9125 in the name of George F. Werst and Hugh Dougherty (perfected under Permit S-7637)
Use: IRRIGATION of 113.0 ACRES AND DOMESTIC USE
Priority Date: JULY 16, 1926
Rate: 1.57 CUBIC FEET 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-EIGHTIETH of one cubic foot per second, or its equivalent in case of rotation.
Source: WALLOWA RIVER, tributary to the GRANDE RONDE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
1 N	42 E	WM	11	SW NW

Authorized Place of Use:

IRRIGATION AND DOMESTIC USE							
Twp	Rng	Mer	Sec	Q-Q	Acres	Current Tax Lot	Owner
1 N	42 E	WM	3	SW SW	40.0	900	Wayne Werst
1 N	42 E	WM	3	SE SW	20.0	900	Wayne Werst
1 N	42 E	WM	4	SE SE	20.0	800	Kim and Mary Werst
1 N	42 E	WM	9	NE NE	6.0	800	Kim and Mary Werst
1 N	42 E	WM	10	NE NW	20.0	900	Wayne Werst
1 N	42 E	WM	10	NW NW	7.0	900	Wayne Werst

4. Certificate 9125 does not describe the location of the WERST DAUGHERTY point of diversion, however the point of diversion information is available from Certificate 45005 and 45008 and the transfer application, indicating that the authorized point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
1 N	42 E	WM	11	SW NW	670 FEET SOUTH AND 990 FEET EAST FROM THE NW CORNER OF THE SW $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 11

5. The second right to be transferred is as follows:

Certificate: 45005 in the name of Norman Werst (perfected under Permit S-33383)
Use: IRRIGATION of 38.3 ACRES
Priority Date: JULY 12, 1968
Rate: 0.96 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 ONE-FORTIETH 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 3.5

acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: WALLOWA RIVER; tributary to the GRANDE RONDE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
1 N	42 E	WM	11	SW NW	WERST DOUGHERTY DITCH: 670 FEET SOUTH AND 990 FEET EAST FROM THE NW CORNER OF THE SW¼NW¼ OF SECTION 11

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Current Tax Lot	Owner
1 N	42 E	WM	4	SW SE	21.6	900	Kim and Mary Werst
1 N	42 E	WM	4	SE SE	16.7	900	Kim and Mary Werst

6. The third right to be transferred is as follows:

Certificate: 45008 in the name of Thomas G. Scott (perfected under Permit S-36660)

Use: IRRIGATION of 30.2 ACRES

Priority Date: FEBRUARY 2, 1972

Rate: 0.76 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 ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: WALLOWA RIVER, tributary to the GRANDE RONDE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
1 N	42 E	WM	11	SW NW	WERST DOUGHERTY DITCH; 670 FEET SOUTH AND 990 FEET EAST FROM THE NW CORNER OF THE SW¼NW¼ OF SECTION 11

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Current Tax Lot	Owner
1 N	42 E	WM	4	NE SW	11.9	1100	Baker Revocable Trust
1 N	42 E	WM	4	NW SW	3.0	1100	Baker Revocable Trust
1 N	42 E	WM	4	SE SW	5.6	1100	Baker Revocable Trust
1 N	42 E	WM	4	NW SE	9.7	1100	Baker Revocable Trust

7. Transfer Application T-7742 proposes to add a point of diversion to reflect historic use approximately 3/4 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
1 N	42 E	WM	10	NW NE	WERST AKA PASTURE DITCH: 300 FEET SOUTH AND 850 FEET EAST FROM THE S¼ CORNER OF SECTION 3

8. Notice of the application for transfer was published on April 15, 1997, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. 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 currently equipped with an appropriate fish screening and/or by-pass device.

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

10. Pursuant to OAR 690-380-2120(2)(a), evidence has been submitted that the actual, current point of diversions for the water rights in question, as described in findings of fact numbered 5, 6, 7, & 8, have been used for more than 10 years.
11. Pursuant to OAR 690-380-2120(2)(c), the Watermaster provided a statement that to his knowledge there has been no complaint of injury due to the use of water at the actual, current points of diversion, prior to the transfer request.
12. The Department did not identify any affected water rights pursuant to OAR 690-380-2120(3).
13. Water has been used within the last five years according to the terms and conditions of the rights. There is no evidence available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
14. Diversion structures and ditches sufficient to use the full amount of water allowed under the existing rights are present.
15. The proposed change would not result in enlargement of the rights.
16. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

17. On January 12, 2011, the department received an affidavit from Wayne Werst certifying that only the DOMESTIC USE of a portion of a water right has been abandoned and requesting cancellation of the domestic use for that portion of the right. The portion of the right to be cancelled is as follows:

Certificate: 9125 in the name of Norman Werst (perfected under Permit S-7637)
Use: DOMESTIC USE ONLY
Source: WALLOWA RIVER, tributary to the GRANDE RONDE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
1 N	42 E	WM	11	SW NW

Authorized Place of Use:

DOMESTIC USE					
Twp	Rng	Mer	Sec	Q-Q	Current Tax Lot
1 N	42 E	WM	3	SW SW	900
1 N	42 E	WM	3	SE SW	900
1 N	42 E	WM	4	SE SE	800
1 N	42 E	WM	10	NE NW	900
1 N	42 E	WM	10	NW NW	900

Conclusions of Law

The proposed change in points of diversion to reflect historical use in application T-7742 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000 and the abandoned portion of the right is cancelled.

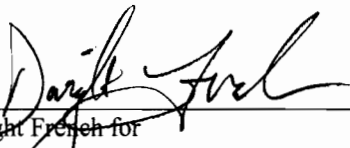
Now, therefore, it is ORDERED:

1. The change proposed in T-7742 is approved and effective immediately. The domestic portion of the Certificate 9125 right that has been abandoned is cancelled.
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 Certificates 9125, 45005 and 45008 and any related decree.
3. Water right certificates 9125, 45005 and 45008 are cancelled. Certificates 86809, 86811 and 86812, respectively, will be issued to describe the additional historic point of diversion for the rights included in T-7742. Certificate 86810 shall be issued to describe the portion of Certificate 9125 not modified by this order. Together, Certificates 86809 and 86810 shall supersede Certificate 9125.
4. The quantity of water diverted at the additional point of diversion, together with that diverted at the authorized point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
5. The water user shall maintain the existing headgate and shall make such improvements as may be required by the Department.
6. The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install

totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.

7. The water user shall maintain and operate fish screening and/or by-pass devices, as appropriate, at the points of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.

Dated at Salem, Oregon this 28 day of January 2011.


Dwight French for
PHILIP C. WARD, DIRECTOR

Mailing date: FEB 01 2011