

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10148, 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

Terry Walker
53558 Yates Lane
Milton-Freewater, OR 97862

Findings of Fact

Background

1. On April 20, 2006, Terry Walker filed an application to change the point of diversion under Certificate 76488. The Department assigned the application number T-10148.

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

Certificate: 76488 in the name of J. A. Bradley (perfected under Permit E-8)

Use: IRRIGATION of 29.3 ACRES

Priority Date: July 16, 1909

Rate: 0.37 CUBIC FOOT PER SECOND (CFS)

Limit/Duty: ONE-EIGHTIETH of ONE CUBIC FOOT PER SECOND per acre or its equivalent for each acre irrigated during the irrigation season of each year

Source: SPRING BRANCH, a tributary to WALLA WALLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q
6 N	35 E	WM	24	SE NW

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an 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 either 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:

Twp	Rng	Mer	Sec	Q - Q	ACRES
6 N	35 E	WM	13	NW SW	3.5
6 N	35 E	WM	13	SW SW	25.8

3. Transfer Application T-10148 proposes to change the point of diversion approximately one mile downstream from the existing authorized point of diversion to:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
6 N	35 E	WM	14	SE SE	642 Feet North and 978 Feet West from the SE Corner of Section 14

4. Notice of the application for transfer was published on May 9, 2006, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
5. On May 3, 2007, the Department mailed a copy of the *draft* Preliminary Determination proposing to approve Transfer Application T-10148 to the applicant. The cover letter that accompanied the *draft* Preliminary Determination set forth a deadline of June 2, 2007, for the applicant to respond. 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.
6. On August 17, 2007, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10148 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 August 21, 2007, and in the Valley Herald newspaper on August 31, September 7, and September 14, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
7. 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 may not currently be equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.
8. 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.
9. A pump, pipeline, booster-pump and hand line 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-10148.
10. The proposed change would not result in enlargement of the right.
11. 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-10148 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-10148 is approved.
2. Water right certificate 76488 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
3. 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 76488 and any related decree.
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 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. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. 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.
6. The approved change 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 change and full beneficial use of the water.
7. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 17th day of October, 2007.


Phillip C. Ward, Director

Mailing date: OCT 22 2007