

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

In the Matter of Transfer Application) **FINAL ORDER APPROVING A**
T-11995, Umatilla County) **CHANGE IN POINTS OF DIVERSION**

Authority

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

ANTONIO RUIZ
84050 YELLOWJACKET ROAD
MILTON FREEWATER, OR 97862

Findings of Fact

1. On March 2, 2015, PAULETTE OLIVER filed an application to change the points of diversion under Certificates 86961 and 86964. The Department assigned the application number T-11995.
2. Notice of the application for transfer was published on March 17, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 27, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11995 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 20, 2015, for the applicant to respond.
4. On April 30, 2015 the applicant filed a request for assignment. On May 4, 2015, transfer T-11995 was assigned to ANTONIO RUIZ.
5. On May 7, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11995 to the applicant. The draft Preliminary

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.

Determination cover letter set forth a deadline of June 8, 2015, for the applicant to respond. The applicant did not respond by the deadline.

6. On July 21, 2015, the Department notified the applicant by mail that consent from all deeded landowners was required to pursue the transfer. On August 17, 2015, the applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer and requested that the Department proceed with issuance of a Preliminary Determination.
7. On October 27, 2015, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11995 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on November 3, 2015, and in the East Oregonian newspaper on November 5 and 12, 2015, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
8. The portion of the first right to be transferred is as follows:

Certificate: 86961 in the name of PLEASANT VIEW IRRIGATION COMPANY AND WALLA WALLA RIVER IRRIGATION DISTRICT (perfected under Permit S-1216)
Use: IRRIGATION of 29.0 ACRES
Priority Date: MARCH 25, 1912
Rate: 0.36 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 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: LITTLE WALLA WALLA RIVER, a tributary of the WALLA WALLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	35	SE SE	5 FEET NORTH AND 1100 FEET WEST FROM THE SE CORNER OF SECTION 35

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	28	SE SW	19.0
6 N	35 E	WM	28	SW SE	10.0

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

Certificate: 86964 in the name of PLEASANT VIEW IRRIGATION DISTRICT AND WALLA WALLA RIVER IRRIGATION DISTRICT (perfected under Permit S-26001)
Use: SUPPLEMENTAL IRRIGATION of 29.0 ACRES
Priority Date: JANUARY 16, 1959

Rate: 0.73 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 0.0375 of one cubic foot per second per acre, or its equivalent for each acre irrigated during the irrigation season of each year.
Source: LITTLE WALLA WALLA RIVER, a tributary of the WALLA WALLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
5 N	35 E	WM	2	NE NE

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	28	SE SW	19.0
6 N	35 E	WM	28	SW SE	10.0

10. Transfer Application T-11995 proposes to move the authorized point of diversion approximately 1.3 miles (Certificate 86964) to 1.6 miles (Certificate 86961) upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SW NE	1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER OF SECTION 12

11. The Oregon Department of Fish and Wildlife has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is currently equipped with an appropriate fish screen.

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

12. 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.
13. A diversion structure and ditch 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-11995.
14. The proposed changes would not result in enlargement of the rights.
15. The proposed changes, as conditioned, would not result in injury to other water rights.

Conclusion of Law

The change in points of diversion proposed in Transfer Application T-11995 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 points of diversion proposed in Transfer Application T-11995 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 Certificates 86961 and 86964 and any related decree.
3. Water right Certificates 86961 and 86964 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.
4. The quantity of water diverted at the new point of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.
5. The Director may require the water user to install a totalizing flow meter or other suitable measuring device at the location where water is removed from the Hudson Bay Canal and applied to the field., 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. When required the water user shall install a totalizing flowmeter.
6. The water user shall operate and maintain an approved fish screen at the new point of diversion. If Oregon Department of Fish and Wildlife (ODFW) determines the screen is 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 is functioning properly.
7. The water rights confirmed by Transfer T-11995 shall be subordinate to all other currently existing water rights with a point of diversion located in the Hudson Bay Canal, between the "Frog Structure" and the authorized place of use, in order to address potential injury to current junior users being regulated off in the event that the Hudson Bay Canal is at maximum capacity.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. 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 changes and full beneficial use of the water.

9. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 17 day of December, 2015.



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

Mailing date: DEC 18 2015