

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

In the Matter of Transfer Application)
T-9794, Umatilla County)
)

FINAL ORDER APPROVING CHANGE
IN POINT OF DIVERSION

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

David Robertson
79980 South Fork Walla Walla River Road
Milton-Freewater, OR 97862

Findings of Fact

1. On September 24, 2004, David Robertson filed a transfer application to change the point of diversion under Certificate 13314. The Department assigned the application number T-9794.

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

Certificate: 13314 in the name of Otto Zimmerman
Use: Irrigation
Priority Date: 1880
Rate/Duty: One and one-half miner’s inches per acre measured at the point of diversion
Acres: 8.1
Source: Walla Walla River, tributary to Columbia River
Authorized Point of Diversion:

Township	Range	Meridian	Sec	¼ ¼	Lot	DLC	Survey Coordinates
4	N 37	E W.M.	5	NE NW			

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	Lot	DLC	Acres
5	N 37	E W.M.	31	SE SE			4.3
5	N 37	E W.M.	32	SW SW			3.8

This is a final order in other than 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.

3. Certificate 13314 describes the authorized source as the Walla Walla River. The authorized place of use and point of diversion are on what is now commonly know as the South Fork Walla Walla River and are located approximately five miles above the confluence with the North Fork Walla Walla River. At the time of the adjudication, the names South Fork Walla Walla River and mainstem Walla Walla River were both used to describe the reach of river on which the authorized diversion is located. Current terminology describes that reach of the river as the South Fork Walla Walla River.
4. Application T-9794 proposes to move the authorized point of diversion approximately 1,450 feet downstream in the South Fork Walla Walla River to:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
5	N	37	E	W.M.	31	SE SE	300'N from SW corner, Section 32

5. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice. However, the Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens.
6. Water has been used within the last five years according to the terms and conditions of the right and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
7. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
8. The proposed change would not result in enlargement of the right.
9. The proposed change would not result in injury to other water rights.

Conclusions of Law


The proposed change in point of diversion in application T-9794 is consistent with the requirements of ORS 537.705 and 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-9794 is approved.
2. Water right certificate 13314 cancelled. A new certificate will be issued describing that portion of the right not involved in 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 13314 and any related decree.
4. The proposed change shall be completed on or before October 1, 2006.

5. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2007.
6. The quantity of water diverted at the point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
7. When required by the Department, the water user shall install and maintain a headgate, 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 headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
8. The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the new point of diversion. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction, and shall be installed under the supervision of the Department of Fish and Wildlife. The water user may participate in the Department of Fish and Wildlife's cost-sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.
9. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 25th day of May, 2005.


Phillip C. Ward, Director

Mailing date: MAY 31 2005