# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application	)	FINAL ORDER
T-11821, Wallowa County	)	APPROVING A 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 .

TOM R. AND DONNA L. BUTTERFIELD 85393 BICENTENNIAL LANE JOSEPH, OR 97846

## **Findings of Fact**

- 1. On May 28, 2014, TOM R. AND DONNA L. BUTTERFIELD filed an application to change the point of diversion under Certificate 3024. The Department assigned the application number T-11821.
- 2. Notice of the application for transfer was published on June 10, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. On September 21, 2013, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11821 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of October 15, 2015, for the applicants to respond.
- 4. On October 1<sup>st</sup> the applicants requested that the completion date be extended to 2022 and the Department to 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.

- 5. On November 17, 2015, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11821 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on November 24, 2015, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
- 6. The portion of the right to be transferred is as follows:

Certificate: 3024 in the name of FARMERS WATER DITCH CO. (confirmed by

Wallowa River)

Use: IRRIGATION OF 70.0 ACRES, LIVESTOCK AND DOMESTIC

**Priority Date: 1900** 

**Limit/Duty:** The amount of water to which right is entitled is limited to an amount

actually beneficially used for said purposes, and shall not exceed 1½ acre feet per acre during any period of 30 days prior to July 31 of each year, and thereafter not to exceed 1 acre foot per acre during the entire remainder of

the irrigation season.

Source:

WALLOWA RIVER, a tributary of the GRANDE RONDE RIVER

#### **Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	
2 S	45 E	WM	5	NWNW	FARMERS DITCH

## **Authorized Place of Use:**

IRRIO	IRRIGATION, LIVESTOCK AND DOMESTIC						
Twp	Rng	Mer	Sec	Q-Q	Acres		
2 S	45 E	WM	27	NW NE	20.0		
2 S	45 E	WM	27	SW NE	40.0		
2 S	45 E	WM	27	NW SE	10.0		
				TOTAL	70.0		

7. Transfer Application T-11821 proposes to move the authorized point of diversion less than \( \frac{1}{4} \) mile upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	45 E	WM	5	NE NW	SILVER LAKE DITCH - 900 FEET SOUTH AND 1700 FEET EAST FROM THE NW CORNER OF SECTION 5.

8. 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)]

9. The quantity of water delivered by the Associated Ditch Companies to the ditches downstream in this reach meets the requirements of the instream right; therefore water is available within the instream reach specified in Certificate 73022.

- 10. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- 11. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11821.
- 12. The proposed change would not result in enlargement of the right.
- 13. The proposed change would not result in injury to other water right.

#### **Conclusions of Law**

The change in point of diversion proposed in Transfer Application T-11821 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 Transfer Application T-11821 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 Certificate 3024 and any related decree.
- 3. Water right certificate 3024 is cancelled. A new certificate will be issued describing those portions of the right not affected by this transfer.
- 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. 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.
- 6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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.

7. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued. Dated at Salem, Oregon this \_\_\_\_\_ day of January, 2016.

Dwigh French, Weter Right Services Administrator, for

Thomas M. Byler, Director
Oregon Water Resources Department

Mailing date: JAN 07 2016