

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10704, Jackson 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

PETER L. AND BILLEE K. STEMPL
4866 UPPER APPLGATE ROAD
JACKSONVILLE, OREGON 97530

Findings of Fact

Background

1. On August 25, 2008, Peter L. and Billee K. Stemple filed an application to change the point of diversion for a portion of the right under Certificate 52560. The Department assigned the application number T-10704.

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

- Certificate:** 52560 in the name of LESLIE C. AND THELMA I. SCHNEIDER AND FRED L. AND NANCY R. STRAUBE (confirmed by Rogue River Decree, [including correcting decrees in 1919 and 1972])
- Use:** IRRIGATION OF 6.70 ACRES, DOMESTIC AND STOCK
- Priority Date:** 1876
- Rate:** 0.167 CUBIC FOOT PER SECOND (CFS)
- Source:** APPLGATE RIVER, tributary to the ROGUE RIVER

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.

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	3 W	WM	5	SW SW	COMSTOCK DITCH - 1000 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION, DOMESTIC AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	3 W	WM	15	SW SW	1.8
39 S	3 W	WM	15	SE SW	4.9

3. Transfer Application T-10704 proposes to move the authorized pump point of diversion approximately 6 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
39 S	3 W	WM	15	SE SW	505	1270 FEET NORTH AND 2050 FEET EAST FROM THE SW CORNER OF SECTION 15

4. Notice of the application for transfer was published on September 2, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
5. On January 12, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10704 to the applicants. The cover letter for the draft Preliminary Determination set forth a deadline of February 20, 2009, for the applicants to respond. By the deadline, the applicants submitted a revised transfer application map that quantifies the remaining acres in each of the two quarter-quarter sections, requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
6. On February 17, 2009, the Department issued a Preliminary Determination proposing to approve Transfer T-704 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on February 24, 2009, and in the Medford Mail Tribune newspaper on March 5, 12 and 19, 2009, 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 is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

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, and 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-10704.
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-10704 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-10704 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 52560 and any related decree.
3. Water right certificate 52560 is cancelled. A new certificate will be issued describing that portion 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. 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. Prior to diverting water, the water user shall install 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 measuring device must be approved by the Department prior to beginning

construction and shall be installed under the general supervision of the Department. The water user shall maintain and operate the measuring device as required by the Department.

7. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2010**. 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 changes and full beneficial use of the water.
8. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 24th day of April 2009.



Phillip C. Ward, Director

Mailing date: APR 28 2009