

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

In the Matter of Permit Amendment) FINAL ORDER
T-11982, Baker County) APPROVING A CHANGE IN POINT
) OF DIVERSION

Authority

Oregon Revised Statute (ORS) 537.211 establishes the process in which a water right permit holder may submit a request to change the point of diversion and/or place of use authorized under an existing water right permit.

Applicant

DURBIN CREEK RANCH
C/O MARY AGAR
3292 GRASS CREEK RD
THERMOPOLIS, WY 82443

Findings of Fact

1. On February 12, 2015, DURBIN CREEK RANCH, C/O MARY AGAR, filed an application to change the point of diversion under Permit S-54139. The Department assigned the application number T-11982.
2. On November 7, 1996, the Department approved an assignment of the permit to Blaine and Peggy Petty.
3. On January 9, 1998, the Department approved an assignment of the permit to Charlie Holtz.
4. On March 25, 2014, the Department approved an assignment of the permit to Mary Agar, c/o Durbin Creek Ranch.
5. On December 19, 2014, the Department approved an extension of time for complete application of water to October 30, 2019.
6. Notice of the application for the permit amendment was published in the Department's weekly notice on February 24, 2015, and in the Baker City Herald newspaper on June 19 and 26, 2015, pursuant to ORS 540.520(5). No comments were filed in response to the notices.

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 and OAR 690-01-0005 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.

7. Permit Amendment Application T-11982 proposes to move the authorized point of diversion approximately 1.1 miles upstream from the existing point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	45 E	WM	4	NW NW	300 FEET SOUTH AND 300 FEET EAST FROM THE NW CORNER OF SECTION 4

8. The Oregon Department of Fish and Wildlife (ODFW) 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 not currently equipped with an appropriate fish screen. Listed fish species are not present at the point of diversion, the originating water right diversion is not screened, cost-share funds are not currently available, and the proposed diversion may be eligible for ODFW's cost-share program. A grace period of two years is appropriate until such time as cost-share funds become available to assist in the construction of a fish screen. If cost-share funds do not become available, the water user must screen within the indicated time period regardless of the availability of cost-share funding.

Permit Amendment Review Criteria

- 9. The change would not result in injury to other water rights.
- 10. The change does not enlarge the permit.
- 11. The change does not alter any other terms of the permit.

Conclusions of Law

The change in point of diversion proposed by Permit Amendment Application T-11982 is consistent with the requirements of ORS 537.211.

Now, therefore, it is ORDERED:

- 1. The change in point of diversion proposed by Permit Amendment Application T-11982 is approved.
- 2. Permit S-54948, in the name of Durbin Creek Ranch, c/o Mary Agar, is issued to replace Permit S-54139, and incorporates the amendments approved by this order, the assignments and the extension of time. Permit S-54139, in the name of CHARLIE HOLTZ, is no longer of any force or effect.
- 3. 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.
- 4. By October 1, 2017, the water user shall install an approved fish screen at the new point of diversion. The water user may withdraw water at the new point of diversion without a screen until October 1, 2017. The water user shall provide to OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall maintain and operate the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If 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.

5. Water shall be acquired from the same surface water source as the original point of diversion.
6. All other terms and conditions of Permit S-54948 remain the same.

Dated at Salem, Oregon this 7 day of July, 2015.



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

Mailing Date: JUL 09 2015

