

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

In the Matter of Transfer Application) **FINAL ORDER APPROVING A**
T-12175, Douglas County) **CHANGE IN POINT OF DIVERSION**
) **AND PLACE OF USE**

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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 Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

OREGON DEPARTMENT OF TRANSPORTATION (ODOT)
REGION 3 - DISTRICT 7
3500 NW STEWART PARKWAY
ROSEBURG, OR 97470

Findings of Fact

1. On October 7, 2015, ODOT filed an application to change the point of diversion and the place of use under Certificate 37197. The Department assigned the application number T-12175.
2. Notice of the application for transfer was published on October 13, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 22, 2016, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12175 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 22, 2016, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer. The applicants also asked that the completion date be extended to 2019.
4. On November 7, 2016, the Department issued a Preliminary Determination proposing to approve Transfer T-12175 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's

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.

weekly notice on November 8, 2016, and in the Roseburg News-Review newspaper on November 11 and 18, 2016 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

5. The right to be transferred is as follows:

Certificate: 37197 in the name of OREGON STATE HIGHWAY COMMISSION
(perfected under Permit S-32632)
Use: IRRIGATION of 11.59 ACRES
Priority Date: MAY 25, 1967
Rate: 0.06 CUBIC FOOT 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, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.
Source: SOUTH UMPQUA RIVER, tributary of UMPQUA RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|-----|-----|-----|-------|--------------------------------------------------------------------------------|
| 29 S | 6 W | WM | 12 | SE NE | 540 FEET NORTH AND 740 FEET WEST FROM THE SE CORNER OF THE NE1/4 OF SECTION 12 |

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|-------|-----|-----|-----|-------|-------|
| 29 S | 5 W | WM | 7 | SW NW | 2.21 |
| 29 S | 5 W | WM | 7 | NW SW | 2.58 |
| 29 S | 6 W | WM | 12 | SE NE | 5.96 |
| 29 S | 6 W | WM | 12 | NE SE | 0.84 |
| Total | | | | | 11.59 |

6. Transfer Application T-12175 proposes to move the authorized point of diversion approximately 23.3 miles downstream to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|-----|-----|-----|-------|--------------------------------------------------------------------|
| 27 S | 6 W | WM | 13 | NE SW | 1715 FEET NORTH AND 220 FEET WEST FROM THE SOUTH 1/4 OF SECTION 13 |

7. Transfer Application T-12175 also proposes to change the place of use of the right to:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|-------|-----|-----|-----|-------|-------|
| 27 S | 5 W | WM | 12 | SE SW | 0.76 |
| 27 S | 5 W | WM | 12 | SW SW | 0.39 |
| 27 S | 6 W | WM | 13 | NE NW | 7.37 |
| 27 S | 6 W | WM | 13 | NW NW | 2.52 |
| 27 S | 6 W | WM | 13 | SE NW | 0.55 |
| Total | | | | | 11.59 |

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. This diversion may be eligible for screening cost-share funds.

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

9. Water has been used within the five-year period prior to submittal of the transfer application 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.
10. 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-12175.
11. The proposed changes would not result in enlargement of the right.
12. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The change in point of diversion and place of use proposed in Transfer Application T-12175 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 and place of use proposed in Transfer Application T-12175 are 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 37197 and any related decree.
3. Water right Certificate 37197 is cancelled.
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. Water use measurement conditions:
 - a. **Before water use may begin** under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at the new point of diversion.
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
6. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the 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 operate and maintain 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.

7. The former place of use of the transferred right shall no longer receive water under the right.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2019**. 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, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 21 day of December, 2016.



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

Mailing date: DEC 30 2016