

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

In the Matter of Transfer Application) FINAL ORDER APPROVING AN
T-10094, Baker County) ADDITIONAL POINT OF DIVERSION
) TO REFLECT HISTORICAL USE

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.

Applicants

JAMES & SHARON HUNT
46242 POCAHONTAS
HAINES, OR 97833

KENNETH & JILL BENSON
46014 HERITAGE RD
BAKER CITY, OR 97814

Agent

LYNN PERKINS
14847 MANSFIELD LN
HAINES, OR 97833

Findings of Fact

1. On February 15, 2006, James & Sharon Hunt and Kenneth & Jill Benson filed a transfer application to change the point of diversion to reflect historical use under Certificate 1472. The Department assigned the application number T-10094.
2. The right to be transferred is as follows:
Certificate: 1472 in the name of DORA B. HUTCHINSON (confirmed by Powder River decree) and Special Order Volume 3, Page 413 approving a change in point of diversion
Use: IRRIGATION of 198.0 ACRES
Priority Date: 1903
Rate: 1.68 CUBIC FEET PER SECOND from March 1 to October 1 of each year
Limit/Duty: 495.0 acre feet each irrigation season
Source: NORTH POWDER RIVER, tributary to POWDER RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
7 S	38 E	WM	18	SW SE	BULGER DITCH

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	38 E	WM	13	NE NE	40.0
7 S	38 E	WM	13	NW NE	40.0
7 S	38 E	WM	13	SW NE	40.0
7 S	38 E	WM	13	SE NE	40.0
7 S	38 E	WM	13	NE SE	20.0
7 S	38 E	WM	13	NW SE	18.0

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.

- The department received information that better describes the location of the Bulger Ditch and is located at:

Authorized Point of Diversion

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
7 S	38 E	WM	18	SW SE	BULGER DITCH; 730 FEET NORTH AND 1370 FEET WEST FROM THE SE CORNER OF SECTION 18

- Application T-10094 proposes to add a point of diversion to reflect historical use to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
7 S	38 E	WM	19	NE SW	MANSFIELD DITCH; 3910 FEET SOUTH AND 2900 FEET WEST FROM THE NE CORNER OF SECTION 19

- Notice of the application for transfer was published on February 28, 2006, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
- Pursuant to 690-380-2120(c), the Watermaster provided a statement that to his knowledge there has been no complaint of injury due to the use of water at the actual, current point of diversion, prior to the transfer request.
- Pursuant to 690-380-2120(4), a memo from the Watermaster dated June 30, 2006, stated that the Department determined there are two affected water rights. A list of water right holders and their addresses were provided.
- Notification to the affected water right holders was sent by regular mail July 5, 2006.
- Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
- The actual current point of diversion has been in use as an additional point of diversion for more than 10 years.
- A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
- The proposed change would not result in enlargement of the right.
- The proposed change would not result in injury to other water rights.
- The Oregon Department of Fish and Wildlife has determined that a fish screening and/or by-pass device may be required in the future 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.

Conclusions of Law

The change in point of diversion to reflect historical use proposed in Transfer Application T-10094 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 to reflect historical use proposed in Transfer Application T-10094 is approved.
2. The proposed change is effective immediately upon issuance of this special order approving Transfer Application T-10094.
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 1492 and any related decree.
4. Water Right Certificate 1472 is cancelled and a new certificate will be issued confirming the change in point of diversion.
5. The quantity of water diverted at the historic point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
6. Prior to diverting water, 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.
7. Within one year after receiving written notification from the Oregon Department of Fish and Wildlife (ODFW) that a fish screen and/or fish by-pass device is required, the water user shall install a screen and/or by-pass device, as appropriate, at the point of diversion. The fish screen and by-pass device must meet 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 criteria. Once installed the water user shall continue to maintain and operate the fish screen and/or fish by-pass device, as appropriate, at the point of diversion consistent with ODFW operational and maintenance standards.

Dated at Salem, Oregon this 17th day of November 2006.



pcw Phillip C. Ward, Director

Mailing date: NOV 24 2006