

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

In the Matter of Permit Amendment) FINAL ORDER DENYING
T-12259, Klamath County) CHANGES IN POINTS OF DIVERSION
) AND A CHANGE IN PLACE OF USE

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

SEVENMILE CREEK RANCH
920 SW 6TH AVE. SUITE 1400
PORTLAND, OR. 97204

Findings of Fact

1. On February 1, 2016, SEVENMILE CREEK RANCH filed an application to change the point of diversion and to change in place of use under Permit R-12576. The Department assigned the application number T-12259.
2. On August 8, 2018, the Department approved an assignment of the permit to Bank of America, N.A. a national banking association.
3. On August 14, 2015, the Department approved an extension of time for complete application of water to October 1, 2020.
4. Notice of the application for the permit amendment was published in the Department's weekly notice on February 9, 2016, pursuant to ORS 540.520(5). No comments were filed in response to the notice.
5. On December 20, 2019, the Department notified the agent and CWRE that the application was to be denied. The applicant is requesting to change the place of use and point of diversion of a storage permit, which the Department does not have authority to complete. The letter requested a response within 30 days. No response was received from the applicant's agent.
6. On February 4, 2020, the Department sent by mail through the United States Post office, a second letter, describing the reasons why (described in Findings of Fact #5 and #10) the Department is denying the application and outlining the request process for refund of fees. The letter requested a response within 30 days. No response was received.

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. On January 12, 2021, the Department sent by mail, through the United States Postal Service, a third letter to the applicant and the assignee describing the reasons why (described in findings of Fact #5 and #10) the Department is denying the application and outlining the request process for refund of fees. The letter requested a response within 30 days. No response was received from either the applicant or the assignee.
8. Permit Amendment Application T-12259 proposes to move the authorized points of diversion with approximately 1.0 mile downstream from the existing points of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	25	NE SW	2452 FEET NORTH AND 1817 FEET EAST FROM THE SW CORNER OF SECTION 25

9. Permit Amendment Application T-12259 also proposes to change the place of use of the permit to:

WETLAND ENHANCEMENT, AQUATIC LIFE, AND WILDLIFE USE				
Twp	Rng	Mer	Sec	Q-Q
33 S	6 E	WM	35	SE NE
33 S	6 E	WM	36	SW NW

10. On February 7, 2018, the Department determined that it does not have the statutory authority to allow changes to the point of diversion or place of use in a permit to store water. ORS 537.400 outlines the characteristics of a storage right, which provides for a right to store water to serve as a source for a subsequent beneficial use. Storage itself is not the beneficial use of water. Transfer statues refer only to water uses subject to transfer, not reservoir permits, storage rights, or rights to store water.

Permit Amendment Review Criteria

1. The proposed place of use is owned and/or controlled by the permit holders.
2. The changes will not alter the terms of the permit.
3. The proposed place of use is contiguous to the authorized place of use.
4. The Department does not have statutory authority to allow changes to the point of diversion or place of use of a permit to store water.

Conclusions of Law

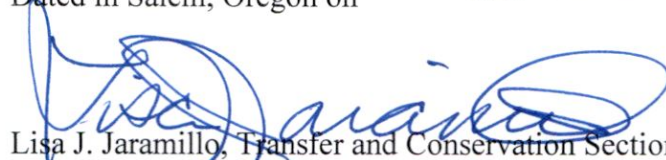
The change in point of diversion and change in place of use proposed by Permit Amendment Application T-12259 is **NOT** consistent with the requirements of ORS 537.211.

Now, therefore, it is ORDERED:

1. The change in point of diversion and change in place of use proposed by Permit Amendment Application T-12259 are DENIED.
2. All terms and conditions of Permit R-12576 remain the same.

Dated in Salem, Oregon on

MAR 0 2 2021



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

Mailing Date:

MAR 0 3 2021