

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10306, 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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

GLORIA DANLEY
5150 BROWNSBORO HWY
EAGLE POINT OR 97524

Agent

ROBERT JONES, CWRE
200 FIRST STREET
PROSPECT, OR 97536

Findings of Fact

Background

1. On February 2, 2007, Gloria Danley filed an application to change the point of diversion under Certificate 17221. The Department assigned the application number T-10306.
2. On July 5, 2007 the applicant submitted a revised application which modified the water right affected by this transfer. The revised application requests a change in point of diversion under Certificate 39596, which is the correct water right appurtenant to lands owned by Gloria Danley.
3. On March 26, 2008, the applicant submitted a revised transfer map showing the number of acres listed on Certificate 39596, including the portion to be transferred (8.67 acres) and the remaining portion (1.83 acres). The new map suggests the place of use of the 1.83 acres remaining is on state highway right-of-way. However specific information as to the

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.

ownership of the remaining portion of the right was not provided. An area of 3.0 acres also shown on the map is not included in Certificate 39596, as it was cancelled from the original right by Special Order Volume 38, page 390, following failure to complete transfer T-2780.

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

Certificate: 39596 in the name of R. E. TUCKER
Use: IRRIGATION of 8.67 ACRES
Quantity: 0.11 CUBIC FOOT PER SECOND (CFS)
Priority Date: MAY 21, 1910
Source: LITTLE BUTTE CREEK, tributary to ROGUE RIVER

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	1 E	WM	5	NE SE	8.67

- Certificate 39596 does not describe the location of the point of diversion, however information is available from the permit under which the right was perfected (Permit S-308) indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	1 E	WM	4	NE SW	150 RODS EAST AND 120 RODS NORTH FROM THE SE CORNER OF SECTION 5

- Application T-10306 proposes to move the authorized point of diversion approximately 0.85 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	1 E	WM	5	NE SE	970 FEET SOUTH AND 950 FEET WEST OF THE EAST QUARTER CORNER OF SECTION 5

- Notice of the application for transfer was published on February 13, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On July 25, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10306 to the applicant and agent. The draft Preliminary Determination set forth a deadline of September 30, 2007, for the applicant to respond and submit a revised map and report of ownership and lien information. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided a revised map and the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
- On April 2, 2008, the Department issued a Preliminary Determination proposing to approve Transfer T-10306 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on April 8, 2008, and in the Upper Rogue Independent newspaper on September 2, 9 and 16,

2008, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

10. 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)]

11. 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.
12. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Application T-10306.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in point of diversion proposed in application T-10306 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-10306 is approved.
2. Water right certificate 39596 is cancelled and a new certificate will be issued describing that portion of the right not affected by this transfer.
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 39596 and any related decree.
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. Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate 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 the headgate as required by the Department.
8. 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 change and full beneficial use of the water.
9. When satisfactory proof of the completed change is received, a new certificate confirming the portion of the right transferred will be issued.

Dated at Salem, Oregon this 31ST day of October 2008.



Phillip C. Ward, Director

Rw

Mailing date: NOV 03 2008