

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-11356, Umatilla County) ADDITIONAL POINTS 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.

Applicant

TRUDY JESSEN
P.O. BOX 388
PILOT ROCK, OR 97868

Findings of Fact

Background

1. On February 21, 2012, Trudy Jessen (Draper), filed an application to add additional points of diversion under Certificate 86819. The Department assigned the application number T-11356.
2. The right to be transferred is as follows:
 - Certificate:** 86819 in the name of PERRY KNOTTS (confirmed by decree of the Circuit Court of the Sate of Oregon for Umatilla County)
 - Use:** IRRIGATION of 12.0 ACRES, DOMESTIC and STOCK USE
 - Priority Date:** 1882 for 4.0 ACRES and 1898 for 8.0 ACRES
 - Rate:** 0.15 CUBIC FOOT PER SECOND (cfs)
 - Limit/Duty:** The use is subject to the provisions of paragraph 33 of said decree and all other conditions and limitations contained in said decree.
 - Source:** CALIFORNIA GULCH, a tributary of EAST BIRCH CREEK

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.

Authorized Place of Use:

IRRIGATION, DOMESTIC LIVESTOCK							
Twp	Rng	Mer	Sec	Q - Q	Priority Date	Tax Lot	Acres
2 S	32 E	WM	10	NE NW	1882	500	4.00
2 S	32 E	WM	10	NE NW	1898	500	1.63
2 S	32 E	WM	10	NE NW	1898	400	3.37
2 S	32 E	WM	10	SE NW	1898	400	3.00

3. Certificate 86819 does not describe the location of the point of diversion. However information is available from the Umatilla River adjudication map and from the current map prepared by the applicant's Certified Water Rights Examiner based on a recent field visit and subsequent survey indicating that the point of diversion on California Gulch is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
9 S	21 E	WM	15	NE NE	SOUTH 7 DEGREES, 53 MINUTES, 31 SECONDS WEST; 2499.32 FEET FROM THE N¼ CORNER OF SECTION 10

4. Transfer Application T-11356 proposes to add additional points of diversion downstream approximately 1500 feet to proposed POD#1 and downstream approximately 3100 feet to proposed POD#2 on East Birch Creek located:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 S	32 E	WM	10	NE NW	POD #1 - SOUTH 21 DEGREES, 51 MINUTE, 37 SECONDS WEST; 1375.65 FEET FROM THE N¼ CORNER OF SECTION 10
2 S	32 E	WM	10	NE NW	POD #2 - SOUTH 82 DEGREES, 13 MINUTES, 20 SECONDS WEST; 1335.1 FEET FROM THE N¼ CORNER OF SECTION 10

5. Transfer Application T-11356 also proposes to irrigate the following lands from each additional point of diversion (in addition to the original authorized POD) as follows:

Authorized Place of Use:

IRRIGATION, DOMESTIC LIVESTOCK								
Twp	Rng	Mer	Sec	Q - Q	Priority Date	Tax Lot	Proposed POD#	Acres
2 S	32 E	WM	10	NE NW	1882	500	POD#2	4.00
2 S	32 E	WM	10	NE NW	1898	500	POD#2	1.63
2 S	32 E	WM	10	NE NW	1898	400	POD#1	3.37
2 S	32 E	WM	10	SE NW	1898	400	POD#1	3.00

6. Certificate 86819 states California Gulch is a tributary to the Umatilla River. However, California Gulch actually flows into East Birch Creek, which in turn contributes to Birch Creek and the Umatilla River.
7. Notice of the application for transfer was published on February 28, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

8. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new points of diversion to prevent fish from entering the diversions and that the diversions are not currently equipped with an appropriate fish screen. This diversions may be eligible for screening cost-share funds.
9. On July 19, 2012, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11356 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 20, 2012, for the applicant to respond. On September 12, 2012, the applicant hand delivered a request for the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that she is authorized to pursue the transfer.
10. On September 24, 2012, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11356 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on October 2, 2012, and in the Pendleton Record newspaper on September 27 and October 4, 2012, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

11. 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.
12. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11356.
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 to add additional points of diversion proposed in Transfer Application T-11356 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 to add additional points of diversion proposed in application T-11356 is 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 86819 and any related decree.

3. Water right certificate 86819 is cancelled.
4. The quantity of water diverted at the new additional points of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion on California Gulch.
5. The water user shall maintain and operate the existing measurement devices and shall make such improvements as may be required by the Department.
6. Prior to diverting water, the water user shall install approved fish screens at the new points of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screens meet the state's criteria, or that ODFW has determined screens are not necessary. The water user shall operate and maintain the fish screens at the new points of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines a 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. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2014**. 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 change and full beneficial use of the water.
8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 6 day of November, 2012.



Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing date: NOV 08 2012