

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

In the Matter of Transfer Application) FINAL ORDER APPROVING AN
T-11292, Jefferson County) ADDITIONAL 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.

Applicant

MICHAEL AND LAURA FEIGNER
4019 NE FERN LANE
MADRAS, OR 97741

Findings of Fact

Background

1. On September 6, 2011, Michael and Laura Feigner filed an application for an additional point of diversion under Certificate 72479. The Department assigned the application number T-11292.
2. The portion of the right to be transferred is as follows:

Certificate: 72479 in the name of Darrell and Luella Friend (perfected under Permit S-40187)
Use: Irrigation of 11.5 acres
Priority Date: January 13, 1976
Rate: 0.25 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-FORTIETH 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 6.0 acre-feet per acre for each acre irrigated during the irrigation

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.

season of each year. The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Source: Trout Creek, a tributary of Deschutes River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	16 E	WM	24	NE SW	200 FEET SOUTH AND 600 FEET WEST FROM CENTER OF SECTION 24

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	16 E	WM	24	SW NW	0.4
9 S	16 E	WM	24	SE NW	11.1

3. Certificate 72479 contains a scrivener's error. Certificate 72479 incorrectly identifies the total acres to be irrigated as 114.7 acres. The tabulation of acres listed in Certificate 72479 equals 129.7 acres.
4. Certificate 72479 describes a portion of the authorized place of use as 0.4 acre in the SWNW and 11.1 acres in the SENW of Section 24, Township 9 South, Range 16 East, WM., Jefferson County, Oregon.
 - a. The transfer application depicts the 0.4 acre and the 11.1 acres under Certificate 72479 as all being in the SENW, Section 24, Township 9 South, Range 16 East, WM..
 - b. On June 28, 2011, the local watermaster met with the landowner and CWRE. They completed a new survey of the land that has always been irrigated under the right. The original survey was not tied into any referenced survey corners and did not coincide with the GPS survey completed by the watermaster and CWRE, leading the Department to conclude that the land to which the right has always been appurtenant should be re-described based on current understanding of how the PLS lines overlie the land.
 - c. The following table lists the place of use as described in existing certificate 72479 and a proposed re-description based on the above findings:

Original Description of Place of Use		Proposed Re-Description of Place of Use	
¼-¼	Acres	¼-¼	Acres
SW NW	0.4	--	--
SE NW	11.1	SE NW	11.5
Township <u>9 S</u> , Range <u>16 E</u> , Section <u>24</u>			

5. Transfer Application T-11292 proposes an additional point of diversion approximately 1850 feet downstream:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	16 E	WM	24	NE NW	1458 FEET NORTH AND 1240 FEET WEST FROM THE CENTER 1/4 OF SECTION 24

6. Notice of the application for transfer was published on September 13, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On February 17, 2012, the Department sent a letter requesting additional information.
8. On February 29, 2012, the Department received a new map and clarification regarding the re-description.
9. 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. Listed fish species are not present at the point of diversion, the originating water right diversion is not screened, cost-share funds are not currently available, and the proposed diversion may be eligible for ODFW's cost-share program. A grace period of two years is appropriate until such time as cost share funds become available to assist in the construction of a fish screening and/or by-pass device. If cost share funds do not become available, the water user must screen within the indicated time period regardless of the availability of cost share funding.
10. On March 2, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11292 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 1, 2012, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
11. On April 2, 2012, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11292 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on April 10, 2012, and in the Madras Pioneer newspaper on April 18, and 25, and May 2, 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)]

8. 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.

9. 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-11292.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights

Conclusions of Law

The additional point of diversion proposed in Transfer Application T-11292 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

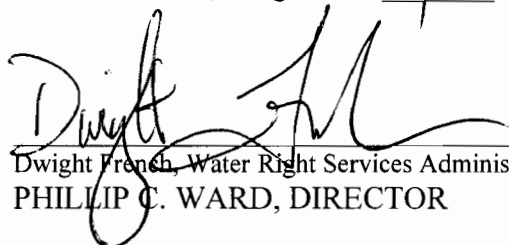
Now, therefore, it is ORDERED:

1. The additional point of diversion proposed in application T-11292 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 72479 and any related decree.
3. Water right certificate 72479 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer. The new certificate will correct the number of acres in the remaining portion of the right.
4. The quantity of water diverted at the additional point 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.
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 devices in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring devices; provided however, where the meter or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
6. Within two years after the date of this order, 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. The water user may withdraw water at the new point of diversion without screening or by-pass devices until two years after the date of this order. 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.

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 4 day of June, 2012.


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

Mailing Date JUN 07 2012