

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

In the Matter of Transfer Application) **FINAL ORDER APPROVING A**
T-11827, Wallowa County) **CHANGE IN PLACE OF USE**

Authority

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicants

EDWARD YORK / JANET A. YORK
82952 EGGLESON LN
ENTERPRISE, OR 97828

Findings of Fact

1. On June 4, 2014, EDWARD AND JANET YORK filed an application to change the place of use under Certificate 46104. The Department assigned the application number T-11827.
2. Notice of the application for transfer was published on June 10, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 12, 2014, the Department contacted the applicants by written correspondence to notify them of deficiencies in the application, being the acres in the application and the application map did not coincide. On February 9, 2015, the applicant submitted an amended application correcting the deficiencies.
4. On March 5, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11827 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 6, 2015, 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.
5. On March 31, 2015, the Department issued a Preliminary Determination proposing to approve Transfer T-11827 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's

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.

weekly notice on April 7, 2015, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

Certificate: 46104 in the name of STUBBLEFIELD DITCH COMPANY (perfected under Permit S-3279)
Use: IRRIGATION of 1.8 ACRES, DOMESTIC AND STOCK USE
Priority Date: FEBRUARY 10, 1917
Rate: 0.02 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-EIGHTIETH of one cubic foot per second per acre.
Source: HURRICANE CREEK, a tributary of WALLOWA RIVER

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|-----|------|-----|-----|-------|-------|
| 2 S | 44 E | WM | 13 | NW NW | 1.8 |

7. Certificate 46104 does not describe the location of the point of diversion, however information is available from the applicant and Certified Water Right Examiner indicating that the point of diversion is located as follows:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|---|
| 2 S | 44 E | WM | 13 | NE SW | 505 FEET SOUTH AND 1340 FEET WEST FROM THE CENTER OF SECTION 13 |

8. Transfer Application T-11827 proposes to change the place of use of the right to:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 2 S | 44 E | WM | 13 | NE NW | 0.2 |
| 2 S | 44 E | WM | 13 | NW NW | 1.6 |

9. The Department determined that the land to which Certificate 46104 is proposed to move is already covered by Certificate 3084 for irrigation use. The overlapping portions are as follows:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 2 S | 44 E | WM | 13 | NE NW | 0.2 |
| 2 S | 44 E | WM | 13 | NW NW | 1.6 |

10. Upon the issuance of a final order approving Transfer T-11827, the portions of Certificate 46104 and the portions of Certificate 3084 that are appurtenant to the same place of use, as described in Finding No. 9, will become "layered" as defined by OAR 690-380-0100(4).

11. The Department is hereby notifying the applicant that, in accordance with OAR 690-380-2240, any future changes in place of use or character of use to the right evidenced by Certificate 46104 may only be approved if concurrent changes to the "layered" portion of

the Certificate 3084 (described in Finding No. 9) are also changed or if an affidavit of voluntary cancellation for the "layered" portion of either certificate is submitted.

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

12. Water has been used within the last five years 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.
13. 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 Transfer Application T-11827.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.

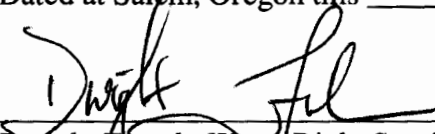
Conclusions of Law

The change in place of use proposed in Transfer Application T-11827 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 place of use proposed in Transfer Application T-11827 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 46104 and any related decree.
3. Water right Certificate 46104 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. The former place of use of the transferred right shall no longer receive water under the right.
5. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. 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.
6. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 1st day of May, 2015.


Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing date: MAY 13 2015