

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A CHANGE
T-11237, Clackamas County) IN POINT OF DIVERSION TO REFLECT
) HISTORIC USE

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.

Applicants

ERIC L. AND LYNDA E. STROM
29391 S MERIDIAN ROAD
HUBBARD, OR 97032

Findings of Fact

Background

1. On April 28, 2011, ERIC L. AND LYNDA E. STROM filed a transfer application for authorization of an historic point of diversion under Certificate 85960. The Department assigned the application number T-11237.

2. The right to be transferred is as follows:

- Certificate:** 85960 in the name of FLOYD LENHARDT (perfected under Permit S-13550)
- Use:** IRRIGATION of 53.3 ACRES
- Priority Date:** APRIL 4, 1939
- Rate:** 0.667 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

This is a final order in other than a 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, 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.

Source: PUDDING RIVER, a tributary to the MOLALLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
4 S	1 W	WM	36	SW NE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 W	WM	36	NE NE	13.6
4 S	1 W	WM	36	NW NE	31.2
4 S	1 W	WM	36	SW NE	8.5

3. Transfer Application T-11237 proposes to move the authorized point of diversion approximately 1.25 stream miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 W	WM	36	NW NE	210 FEET SOUTH AND 190 FEET EAST FROM THE N¼ CORNER OF SECTION 36

4. Notice of the application for transfer was published on May 3, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
5. 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 currently equipped with an appropriate fish screening and/or by-pass device.
6. On October 20, 2011, the Department provided the applicants a draft Final Order proposing to approve Transfer Application T-11237 and requested ownership information. The cover letter for the draft Final Order set forth a deadline of November 22, 2011, for the applicant to respond. The applicants requested that the Department proceed with issuance of a Final Order and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

Transfer Review Criteria (ORS 540.532 and OAR 690-380-2120)

7. Pursuant to OAR 690-380-2120(2)(a), evidence has been submitted that the actual, current point of diversion for the water right in question, as described in Finding No. 3, has been in use for more than 10 years.
8. Pursuant to OAR 690-380-2120(2)(c), the Watermaster provided a statement that to his knowledge there has been no complaint of injury due to the use of water at the actual, current point of diversion, prior to the transfer request.

9. Pursuant to OAR 690-380-2120(3), the Department provided the applicant a list of the affected water rights and a copy of the notice to be provided to each affected water right holder. The applicant has provided written proof of service of notice of the proposed transfer on all affected water right holders.
10. Water has been used within the last five years according to the terms and conditions of the right. There is no evidence available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
11. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right is present.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

Conclusions of Law

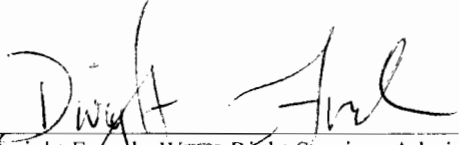
The proposed change in point of diversion to reflect historical use in Transfer Application T-11237 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of diversion to reflect historical use proposed in Transfer Application T-11237 is approved and effective immediately.
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 85960 and any related decree.
3. Water right certificate 85960 is cancelled. Certificate 87312 will be issued to describe the change in point of diversion for the right included in Transfer Application T-11237.
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. When required by the Department, the water user shall install and maintain a headgate, 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 headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

6. The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.

Dated at Salem, Oregon this 1 day of December 2011.


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

Mailing date: Dec 5 2011