

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

In the Matter of Transfer Application             )     FINAL ORDER  
T-10617, Morrow County                         )     APPROVING AN 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**

BERNARD AND JEAN DAMON  
2315 ROCKY LANE  
EUGENE, OREGON 97401

**Findings of Fact**

***Background***

1. On May 6, 2008, Bernard and Jean Damon filed an application for an additional point of diversion under Certificates 113, 52223 and 52224. The Department assigned the application number T-10617.
2. On June 1, 2009, the applicant submitted an amended map to clarify the place of use under the existing water rights.
3. The first right to be transferred is as follows:

**Certificate:** 113 in the name of HENRY BLAHM (confirmed by Willow Creek Decree for Gilliam and Morrow Counties (F))  
**Use:** IRRIGATION OF 39.0 ACRES  
**Priority Dates:** 1889 FOR THE IRRIGATION OF 15.0 ACRES AND 1909 FOR THE IRRIGATION OF 24.0 ACRES  
**Rate:** 0.25 CUBIC FOOT PER SECOND (CFS) AS OF DATE 1889 AND 0.40 CFS AS OF DATE 1909  
**Period of Use:** MARCH 15 TO SEPTEMBER 15 OF EACH YEAR  
**Source:** WILLOW CREEK, tributary to the COLUMBIA RIVER

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					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	26 E	WM	17	SE SE	4.0
2 S	26 E	WM	20	NE NE	19.0
2 S	26 E	WM	21	NW NW	16.0
TOTAL					39.0

4. Certificate 113 does not describe the location of the point of diversion, however information is available from the Willow Creek Decree and associated adjudication map indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q
2 S	26 E	WM	21	NE SW

5. The second water right to be transferred is as follows:

**Certificate:** 52223 in the name of MRS. ANNA GRAHAM (confirmed by Willow Creek Decree for Gilliam and Morrow Counties (F))  
**Use:** IRRIGATION OF 63.5 ACRES AND DOMESTIC  
**Priority Date:** 1884  
**Rate:** 1.06 CUBIC FEET PER SECOND, IF AVAILABLE AT THE ORIGINAL POINTS OF DIVERSION: NE¼ SW¼, SW¼ NW¼, SECTION 21, T 2 S, R 26 E, W.M.; 247 FEET SOUTH AND 1310 FEET WEST, 1237 FEET NORTH AND 1650 FEET WEST, BOTH FROM THE CENTER OF SECTION 21 AND THE DUTTON AND CLARK DITCH.  
**Period of Use:** IRRIGATION FROM MARCH 1 TO JULY 1 OF EACH YEAR  
**Source:** WILLOW CREEK, tributary to the COLUMBIA RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	26 E	WM	21	NE SW	POD 1 - 240 feet South and 1120 feet West from the Center of Section 21
2 S	26 E	WM	21	SE NW	POD 2 - 1950 feet South and 1490 feet East from the NW Corner of Section 21
2 S	26 E	WM	17	SE SE	POD 3 - 600 feet North and 680 feet West from the SE Corner of Section 21

**Authorized Place of Use:**

IRRIGATION AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	26 E	WM	17	SW SE	15.8
2 S	26 E	WM	17	SE SE	4.2
2 S	26 E	WM	21	SW NW	32.0
2 S	26 E	WM	21	SE NW	4.5
2 S	26 E	WM	21	NE SW	4.0
2 S	26 E	WM	21	NW SW	3.0
TOTAL					63.5

6. The third water right to be transferred is as follows:

**Certificate:** 52224 in the name of MRS. ANNA GRAHAM (confirmed by Willow Creek Decree for Gilliam and Morrow Counties (F))  
**Use:** IRRIGATION OF 22.0 ACRES  
**Priority Date:** 1889 FOR 0.08 CUBIC FOOT PER SECOND (CFS) AND 5.0 ACRES; 1891 FOR 0.29 CFS AND 17.0 ACRES  
**Rate:** 0.37 CUBIC FOOT PER SECOND, IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION: NE¼ NW¼, SECTION 27, T 2 S, R 26 E, WM; DUTTON AND CLARK DITCH – 1000 FEET SOUTH AND 1600 FEET EAST FROM THE NW CORNER OF SECTION 27.  
**Period of Use:** BEGINNING IN APRIL OF EACH YEAR  
**Source:** WILLOW CREEK, tributary to the COLUMBIA RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	26 E	WM	21	NE SW	POD 1 - 240 feet South and 1120 feet West from the Center of Section 21
2 S	26 E	WM	17	SE SE	POD 3 - 600 feet North and 680 feet West from the SE Corner of Section 17

**Authorized Places of Use:**

IRRIGATION – Priority Date 1891					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	26 E	WM	17	NW SE	12.5
2 S	26 E	WM	17	SE SE	4.5

IRRIGATION - Priority Date 1889					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	26 E	WM	17	SE SE	2.8
2 S	26 E	WM	20	NE NE	0.3
2 S	26 E	WM	20	SE NE	1.9

7. Transfer Application T-10617 proposes an additional point of diversion for all the above described rights located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	26 E	WM	21	NW NW	1215 feet South and 815 feet East from the NW Corner of Section 21

8. Notice of the application for transfer was published on May 20, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. On November 28, 2008, the Department mailed a letter to the applicant identifying multiple deficiencies in the application and map. The agent for the applicant requested that the Department grant additional time in which to amend the application and correct the map. A new amended application was received February 18, 2009, and a new map was received on June 1, 2009.
10. On June 5, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10617 to the applicants. The cover letter for the draft Preliminary Determination set forth a deadline of July 6, 2009, 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 June 26, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10617 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on June 30, 2009, and in the Heppner-Gazette Times newspaper on July 8, 15, and 22, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
12. 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)]***

13. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
14. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-10617.
15. The proposed change would not result in enlargement of the rights.
16. The proposed change would not result in injury to other water rights.

**Conclusions of Law**

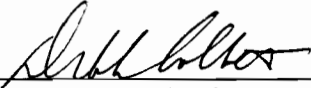
The additional point of diversion proposed in Transfer Application T-10617 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The additional point of diversion proposed in Transfer Application T-10617 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 Certificates 113, 52223, and 52224 and any related decree.
3. Water right certificates 113, 52223, and 52224 are cancelled.
4. The quantity of water diverted at the additional point of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.
5. The Director may require the water user to install a totalizing a flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.
6. When required by the Department, the water user shall install, maintain and operate 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.
7. 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.
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, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 31<sup>st</sup> day of August 2009.

  
Phillip C. Ward, Director *PCW*

Mailing Date: SEP 02 2009