

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

In the Matter of Transfer Application) FINAL ORDER
T-10422, Umatilla County) APPROVING A CHANGE IN POINT OF
) DIVERSION AND PLACE OF 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.

Applicant

William and Kathy S. Burnett
P.O. Box 365
Stanfield, OR 97875

Receiving Landowners

Terrence and Carol Goodrich
77513 Hoosier Road
Stanfield, OR 97875

Findings of Fact

Background

1. On June 28, 2007, William and Kathy S. Burnett filed an application to change the place of use and point of diversion under a portion of Certificate 12164. The Department assigned the application number T-10422.
2. The applicant indicated that Terrence and Carol Goodrich are the receiving landowners and will be responsible for the completion of the changes proposed in Transfer Application T-10422.
3. The portion of the right to be transferred is as follows:

Certificate: 12164 in the name of M. J. McDERMOTT (perfected under Permit S-12433)
Use: IRRIGATION of 11.3 ACRES
Priority Date: NOVEMBER 5, 1936
Rate: 0.14 CUBIC FOOT PER SECOND

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.

Limit/Duty: ONE-EIGHTIETH 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 3.0 acre feet per acre for each acre irrigated during the irrigation season

Source: UMATILLA DRAINAGE DITCH - STANFIELD IRRIGATION DISTRICT (STANFIELD DRAIN), a tributary of the UMATILLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q
4 N	29 E	WM	32	NW NW SW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 N	29 E	WM	32	SW NW	8.7
4 N	29 E	WM	32	NW SW	2.6

4. The applicant has submitted information that more accurately describes the authorized point of diversion as:

Twp	Rng	Mer	Sec	Q - Q	Measured distances
4 N	29 E	WM	32	NW SW	775 Feet South and 560 Feet East from the W ¹ / ₄ Corner of Section 32

5. Transfer Application T-10422 proposes to change the place of use to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Acres	Tax Lot
4 N	29 E	WM	31	NW NW	11.3	600

6. Transfer Application T-10422 also proposes to change the point of diversion approximately 3,950 feet downstream on the Stanfield Drain, then approximately 5,000 feet downstream on the Umatilla River to a pump located:

Twp	Rng	Mer	Sec	Q - Q	Measured distances
4 N	29 E	WM	31	SW NW	1440 Feet South and 130 Feet East from the NW Corner of Section 31

7. Notice of the application for transfer was published on July 3, 2007, 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 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.

9. The distance involved between the original point of diversion (POD) and the new proposed point of diversion is over 1.5 miles. With the best available information, the Department has determined that a conveyance loss factor of 1 percent should be applied to the amount of water being protected to reach the new POD. The amount of water at full face value for the 11.3 acres to be transferred is 0.146 cubic foot per second (cfs). The 1 percent factor will reduce the amount by 0.001 cfs, which should alleviate enlargement of the right and mitigate for any potential injury to other water rights, including any intervening rights.
10. On August 18, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10422 to the applicants. The cover letter for the draft Preliminary Determination set forth a deadline of September 18, 2008, 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 applicant is authorized to pursue the transfer.
11. On November 6, 2008, the Department issued a preliminary determination proposing to approve Transfer Application T-10422 and mailed a copy to the applicant. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on November 11, 2008, and in the Hermiston Herald on November 23, December 3, and 10, 2008, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

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, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
13. 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-10422.
14. The proposed changes, as conditioned, would not result in enlargement of the right.
15. The proposed changes, as conditioned, would not result in injury to other water rights.

Conclusions of Law

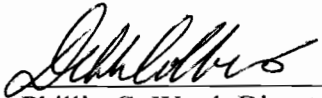
The changes in place of use and point of diversion proposed in Transfer Application T-10422 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in place of use and point of diversion proposed in Transfer Application T-10422 are 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 12164 and any related decree.
3. Water Right Certificate 12164 is cancelled. A new certificate will be issued describing that portion of the right NOT affected by this transfer application.
4. The use of water under this right shall be subject to a conveyance loss of 1 percent (approximately 0.001 cfs) and to all other applicable conditions and restrictions that existed at the original point of diversion.
5. 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.
6. The former place of use of the transferred right shall no longer receive water under the right.
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. Prior to diverting water, the water user shall install 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 measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain and operate the measuring device as required by the Department.
9. Prior to diverting water, the water user shall install 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. The water user shall maintain the headgate as required by the Department.

10. The approved changes 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 changes and full beneficial use of the water.
11. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 9th day of January 2009.


Phillip C. Ward, Director

Mailing Date: JAN 21 2009