

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

In the Matter of Transfer Application)
T-11374, Benton County)
)
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)
)

SUPERSEDING FINAL ORDER
APPROVING A CHANGE IN POINT OF
DIVERSION AND CORRECTING A
SCRIVENER’S ERROR IN A
PREVIOUS ORDER

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

VITAL FARMLAND, LP
ATTEN: JASON BRADFORD
1330 NW 29TH ST
CORVALLIS, OR 97330

Findings of Fact

Background

1. On March 19, 2012, VITAL FARMLAND, LP filed an application to change the point of diversion under Certificate 41975. The Department assigned the application number T-11374.

2. The portion of the first right to be transferred is as follows:
 - Certificate:** 41975 in the name of GEORGE SHROYER, JR. (perfected under Permit S-34297)
 - Use:** IRRIGATION of 38.1 ACRES
 - Priority Date:** APRIL 2, 1969
 - Rate:** 0.48 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, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to

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.

exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: MARYS RIVER, tributary to the WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
12 S	6 W	WM	13	SW NE	51	1100 FEET SOUTH AND 830 FEET EAST FROM THE SW CORNER OF PENLAND DLC 45

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
12 S	6 W	WM	13	SW NE	51	17.2
12 S	6 W	WM	13	SE NW	51	3.2
12 S	6 W	WM	13	NE SW	51	1.3
12 S	6 W	WM	13	NE SE	51	0.4
12 S	6 W	WM	13	NW SE	51	16.0
Total						38.1

- Transfer Application T-11374 proposes to move the authorized point of diversion approximately 1800 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
12 S	6 W	WM	13	NE SE	51	2610 FEET SOUTH AND 1880 FEET EAST FROM THE SW CORNER OF PENLAND DLC 45

- Notice of the application for transfer was published on March 27, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On July 27, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11374 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 28, 2012, for the applicant to respond. The applicant 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.
- On August 27, 2012, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11374 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on August 28, 2012, and in the Gazette-Times newspaper on August 15 and 22, 2012, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
- On September 28, 2012, the Department issued a final Order for the transfer, recorded at Special Order Volume 88, Pages 588 to 591. Shortly following issuance of the order, the Department recognized a scrivener's error in the description of the location of the proposed point of diversion.

8. This order is issued to correct the scrivener's error and to supersede the previous order recorded at volume 88, Pages 588 to 591.
9. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

10. 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.
11. 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-11374.
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 change in point of diversion proposed in Transfer Application T-11374 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000, and the scrivener's error in Special Order Volume 88, Pages 588 to 591 should be corrected in the record.

Now, therefore, it is ORDERED:

1. The order entered at Special Order Volume 88, Pages 588 to 591 is withdrawn and of no further force and effect, and is superseded by this order.
2. The change in point of diversion proposed in Transfer Application T-11374 is approved.
3. 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 41975 and any related decree.
4. Water right certificate 41975 is cancelled.
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. 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 device in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
7. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2013**. 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.
9. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 14 day of December, 2012.


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

Mailing date: DEC 20 2012