

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

In the Matter of Transfer Application)	FINAL ORDER
T-11596, Union County)	APPROVING A CHANGE IN PLACE
)	OF USE AND A CHANGE IN 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.

Applicants

AUSTIN AND JEANA BINGAMAN
P.O. BOX 222
IMBLER, OR 97841

Agent

GREG BLACKMAN
126 RIDGE DRIVE
LA GRANDE, OR 97850

Findings of Fact

Background

1. On May 10, 2013, Austin and Jeana Bingaman filed an application to change the place of use under Certificate 85560. The Department assigned the application number T-11596.
2. Notice of the application for transfer was published on May 21, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 3, 2013, the department received an amended application and map modifying the transfer to including a change in point of diversion.
4. On December 6, 2013, the applicant's agent requested to extend the completion date to October 1, 2020.
5. Transfer Application T-11662 was filed September 5, 2013. This transfer modifies the same right proposed in T-11596. Certificate 85560 shall be canceled after both transfer applications are processed.

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.

6. On December 5, 2013, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11596 to the applicants. The Preliminary Determination cover letter set forth a deadline of January 3, 2014, 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.
7. On January 10, 2014, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11596 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on January 14, 2014, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
8. The portion of the right to be transferred is as follows:

Certificate: 85560 in the name of ORODELL DITCH ASSOCIATION (confirmed by Grande Ronde River, Consolidated)

Use: IRRIGATION of 40.0 ACRES

Priority Date: 1872

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-FORTIETH 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: GRANDE RONDE RIVER, tributary to the SNAKE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Ditch Name
2 S	38 E	WM	31	SW SW	Orodell Ditch

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	38 E	WM	28	SE SE	40.0

9. This right is further limited by the Grande Ronde River Consolidated decree stating that the Orodell Ditch Association is entitled to divert 100 miner's inched between September first of each year and May first of the following year, 500 miner's inches between May first and July first of each year, and 200 miner's inches between July first and September first of each year, but at no time shall said Orodell Ditch Association divert more than half of the flow of the Grande Ronde River.

10. Transfer Application T-11596 proposes to change the point of diversion upstream because of federal highway re-alignment to within the same quarter quarter to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 S	38 E	WM	31	SW SW	1858.33 FEET SOUTH AND 80.84 FEET EAST FROM THE W¼ CORNER OF SECTION 31

11. Transfer Application T-11596 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	38 E	WM	22	NE SW	40.0

12. The Oregon Department of Fish and Wildlife 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 currently equipped with an appropriate fish screen.

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

13. 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.
14. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11596.
15. The proposed changes would not result in enlargement of the right.
16. The proposed changes would not result in injury to other water rights.

Conclusions of Law

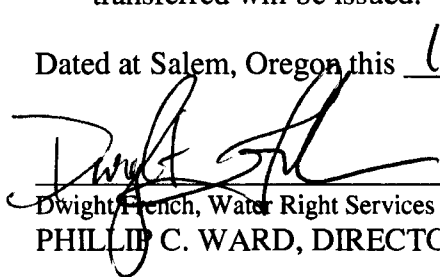
The changes in place of use and point of diversion proposed in Transfer Application T-11596 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in place of use and point of diversion proposed in Transfer Application T-11596 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 85560 and any related decree.
3. Water Right Certificate 85560 is modified and will be canceled upon approval or denial of T-11622. A new certificate will be issued describing that portion of the right not affected by this transfer.

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. The water user shall maintain and operate a fish screening and/or by-pass device as appropriate, at the point of diversion consistent with Oregon Department of Fish and Wildlife's operational and maintenance standards.
6. The former place of use of the transferred right shall no longer receive water under the right.
7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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 changes and full beneficial use of the water.
8. 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 February, 2014.


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

Mailing date: FEB 21 2014