

Limit/Duty: ONE-FORTIETH of one cubic foot per second per acre
Source: PINE CREEK, a tributary of POWDER RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	39 E	WM	29	SW NW	28.5
8 S	39 E	WM	30	SE NE	15.5

5. Certificate 4018 does not describe the location of the point of diversion, however information is available from the Department indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q
8 S	39 E	WM	30	NW SW

6. The portion of the second right to be transferred is as follows:

Certificate: 75726 in the name of W. J. SELBY (confirmed by Powder River Decree)
Use: IRRIGATION of 15.0 ACRES
Priority Date: 1888
Limit/Duty: ONE-FORTIETH of one cubic foot per second per acre
Source: PINE CREEK, a tributary of POWDER RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
8 S	39 E	WM	30	NW SE	Bowman-Jeffries Ditch

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	39 E	WM	29	SE NW	15.0

7. The Powder River Decree and associated adjudicated map further describes the rights and recognizes the Bennett Ditch as the point of diversion for both rights.
8. Transfer Application T-11679 proposes to move the authorized point of diversion approximately 1/4 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	39 E	WM	30	NE SW	BENNETT DITCH:2800 FEET SOUTH AND 2370 FEET EAST FROM THE NW CORNER OF SECTION 30

9. The Oregon Department of Fish and Wildlife has determined that the diversion is not currently equipped with an appropriate fish screen, but a fish screen may be required in the future at the new point of diversion to prevent fish from entering the diversion.

10. 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. 8, has been in use for more than 10 years.
11. Pursuant to OAR 690-380-2120(2)(c), the Watermaster and Deputy Watermaster both provided a statement that to their 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.
12. The Department did not identify any affected water rights pursuant to OAR 690-380-2120(3).
13. 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.
14. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights is present.
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 proposed change in the point of diversion to reflect historic use in Transfer Application T-11679 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 historic use proposed in Transfer Application T-11679 is approved and shall be effective immediately upon issuance of this order.
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 4018 and 75726 and any related decree.
3. Water right Certificates 4018 and 75726 are cancelled. Certificates 89153 and 89154 will be issued to describe the change in point of diversion for the portion of the rights involved in Transfer Application T-11679. Certificates 89155 and 89156 shall be issued to describe the portions of Certificates 4018 and 75726 not modified by this order. Together, the new Certificates shall supersede Certificates 4018 and 75726.
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 the weir and pool as required by the Department.

6. The Oregon Department of Fish and Wildlife (ODFW) may require the water user to install an approved fish screen at the new point of diversion within one year after receiving written notification that a fish screen is required. Once installed the water user shall maintain and operate the fish screen at the new point of diversion according to 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.

Dated at Salem, Oregon this 18 day of June, 2014.



Dwight French
Water Right Services Administrator, for
Director
Oregon Water Resources Department

Mailing Date: JUL 01 2014