

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

| | | |
|---------------------------------------|---|-------------------------------|
| In the Matter of Transfer Application |) | ORDER ON RECONSIDERATION, |
| T-11628, Josephine County |) | WITHDRAWAL OF A FINAL ORDER |
| |) | RECORDED IN SPECIAL ORDER |
| |) | VOLUME 95 PAGES 618-621, AND |
| |) | ISSUANCE OF A SUPERSEDING |
| |) | FINAL ORDER APPROVING A |
| |) | CHANGE IN POINT OF DIVERSION, |
| |) | PLACE OF USE, AND CHARACTER |
| |) | OF USE |

Authority

Oregon Revised Statutes (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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

WANDA L. POWELL
PO BOX 176
O'BRIEN, OR 97534

Receiving Landowner

ROBERT A. POWELL
PO BOX 176
O'BRIEN, OR 97534

Findings of Fact

1. On June 28, 2013, WANDA L. POWELL filed an application to change the point of diversion, place of use, and to change the character of use under Certificate 20977. The Department assigned the application number T-11628.
2. On May 4, 2015, the Department issued an order approving Transfer Application T-11628. The order is recorded in Special Order Volume 95, Pages 618-621.
3. On May 29, 2015, the Department received a petition from Wanda Powell and Robert Powell asking for reconsideration of the final order approving Transfer Application T-11628. The petition describes that the applicant requested that the domestic use be prorated to a year round domestic use from the seven-month irrigation season.
4. The Department has considered the applicant's petition for reconsideration on the final order recorded at Volume 95, Pages 618-621.

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.

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

Certificate: 20977 in the name of DAVID E. WILSON (perfected under Permit S-17966)
Use: IRRIGATION of 0.4 ACRES
Priority Date: SEPTEMBER 23, 1947
Rate: 0.008 CUBIC FOOT PER SECOND (CFS)
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-FIFTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated throughout the irrigation season from April 1st to November 1st of each year, and shall be still further limited to a diversion of not to exceed 0.008 c.f.s.
Period of Use: April 1 through November 1
Source: LITTLE ROCK CREEK, a tributary of WEST FORK OF ILLINOIS RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q |
|------|-----|-----|-----|-------|
| 40 S | 9 W | WM | 27 | SE NE |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 40 S | 9 W | WM | 26 | NW SW | 0.4 |

6. Certificate 20977 does not describe the measured distances of the point of diversion, however information is available from the applicant and the Certified Water Right Examiner indicating that the point of diversion is as follows:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|-----|-----|-----|-------|---|
| 40 S | 9 W | WM | 27 | NE SE | 230 FEET SOUTH AND 420 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 27 |

7. Transfer Application T-11628 proposes to move the authorized point of diversion approximately 425 feet downstream to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|-----|-----|-----|-------|--|
| 40 S | 9 W | WM | 27 | NE SE | 380 FEET SOUTH AND 50 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 27 |

8. Transfer Application T-11628 proposes to change the character of use on 0.4 acre from irrigation to year round domestic use.

9. Certificate 20977 does not list the duty of water for irrigation; however, using the calculation of $(0.008 * 1.98 * 215 = 3.4 \text{ af per season})$, then $(3.4 / 365 / 1.98 = 0.005 \text{ cfs})$, it is 3.4 acre feet per season and 0.005 cfs year round.

10. To avoid enlargement, the amount of water must be reduced to 0.005 cfs.

- Transfer Application T-11628 also proposes to change the place of use of the 0.4 acre to within:

| DOMESTIC | | | | |
|----------|-----|-----|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q |
| 40 S | 9 W | WM | 26 | NW SW |

- 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.
- Notice of the application for transfer was published on July 2, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On February 17, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11628 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 20, 2015, for the applicant to respond.
- On February 18, 2015, the applicant's agent contacted the Department with questions regarding the draft Preliminary Determination. On March 2, 2015, the Department mailed a revised draft Preliminary Determination and March 3, 2015, a second revised draft Preliminary Determination was sent.
- On March 5, 2015, 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 March 20, 2015, the Department issued a Preliminary Determination proposing to approve Transfer T-11628 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 March 24, 2015, and in the Grants Pass Daily Courier newspaper on March 27 and April 3, 2015 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
- On May 4, 2015, the Department issued a Final Order recorded at Special Order Volume 95, Pages 618-621, and on May 29, 2015, a petition for reconsideration was filed within the 60 day period specified by ORS 536.075 and OAR 137-003-0675, as detailed in Findings of Fact No. 3 and 4.

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

- 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.

20. 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-11628.
21. The proposed changes, as conditioned, would not result in enlargement of the right.
22. The proposed changes, as conditioned, would not result in injury to other water rights.

Conclusions of Law

The petition for reconsideration was filed within the 60 day period specified by ORS 536.075 and OAR 137-003-0675.

The change in point of diversion, change in place of use and change in character of use proposed in Transfer Application T-11628 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

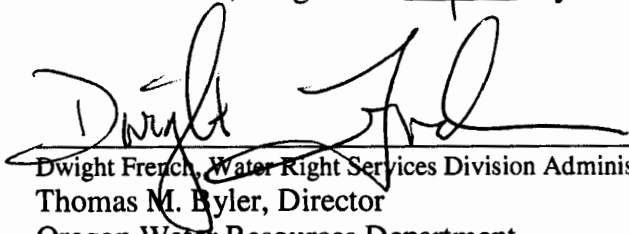
1. The petition for reconsideration of the Final Order for T-11628 is granted. The order recorded at Special Order Volume 95, Pages 618-621 is withdrawn and is of no further force or effect and is superseded by this order.
2. The change in point of diversion, change in place of use and change in character of use proposed in Transfer Application T-11628 are 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 20977 and any related decree.
4. The amount of water diverted for domestic use shall be limited to a rate of diversion of 0.005 cfs.
5. Water right Certificate 20977 is cancelled. A new superseding certificate will be issued describing that portion of the right not affected by this transfer.
6. 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.
7. 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 each 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.
8. 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 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.

9. The former place of use of the transferred right shall no longer receive water under the right.
10. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. 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.
11. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 4 day of September, 2015.


Dwight French, Water Right Services Division Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing date: SEP 10 2015