

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

In the Matter of Transfer Application) FINAL ORDER APPROVING AN
T-11210, Deschutes County) ADDITIONAL POINT OF DIVERSION
) AND CHANGE IN 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

TUMALO TOWN DISTRICT IMPROVEMENT CO.
64682 COOK AVENUE #54
BEND, OR 97701

Findings of Fact

Background

1. On March 11, 2011, TUMALO TOWN DISTRICT IMPROVEMENT CO. filed an application for an additional point of diversion and to change the place of use under Certificate 76619. The Department assigned the application number T-11210.
2. On September 1, 2011, the applicant submitted an amended application and map clarifying the proposed place of use.
3. The portion of the right to be transferred is as follows:

Certificate: 76619 in the name of TUMALO TOWN DISTRICT IMPROVEMENT CO. (perfected under Permit S-13245)
Use: IRRIGATION of 1.39 ACRES AND DOMESTIC USE
Priority Date: AUGUST 25, 1938
Rate: 0.0893 CUBIC FOOT PER SECOND; BEING 0.0347 CFS FOR IRRIGATION AND 0.0546 CFS FOR DOMESTIC USE
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

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.

of ONE-EIGHTIETH of one cubic foot per second or its equivalent for each acre irrigated from April 1 to May 22, ONE-FORTIETH of one cubic foot per second or its equivalent for each acre irrigated after August 20 of each year and shall be further limited to a diversion of not to exceed 4.0 acre-feet for each acre irrigated during the irrigation season of each year from April 1 to November 1.

Sources: SEEPAGE FROM TUMALO CREEK, a tributary of the DESCHUTES RIVER, AND THE DESCHUTES RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	12 E	WM	6	NW SE	DIVERSION NO. 1 - 2230 FEET SOUTH AND 1650 FEET WEST FROM THE SE CORNER OF SECTION 6

Authorized Place of Use:

IRRIGATION AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	12 E	WM	31	NW NE	0.926
16 S	12 E	WM	31	SW NE	0.464
Total					1.390

4. The survey coordinates for the above listed authorized point of diversion and as described in Certificate 76619 contain a scrivener’s error. Consistent with all available information, the correct measured distances for the point of diversion are as follows.

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	12 E	WM	6	NW SE	DIVERSION NO. 1 - 2230 FEET NORTH AND 1650 FEET WEST FROM THE SE CORNER OF SECTION 6

5. Transfer Application T-11210 proposes an additional point of diversion approximately 4,770 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
16 S	12 E	WM	31	SE SE	DIVERSION NO. 3 - 1149 FEET NORTH AND 943 FEET WEST FROM THE SE CORNER OF SECTION 31

6. Transfer Application T-11210 also proposes to change the place of use of the right to:

IRRIGATION AND DOMESTIC						Supplemental Information		
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Name	POD ID
16 S	12 E	WM	31	SW NE	0.174	5101	E. Edwards	1
16 S	12 E	WM	31	NW SE	0.050	1301	J. Gisler	3
16 S	12 E	WM	31	NW SE	0.060	202	P. Gisler	3
16 S	12 E	WM	31	NW SE	0.060	204	P. Gisler	3
16 S	12 E	WM	31	NW SE	0.060	201	P. Gisler	3
16 S	12 E	WM	31	NW SE	0.060	200	P. Gisler	3
16 S	12 E	WM	31	NW SE	0.200	203	P. Gisler	3
16 S	12 E	WM	31	NW SE	0.100	1204	P. Gisler	3
16 S	12 E	WM	31	NW SE	0.050	1201	J. Gisler	3

IRRIGATION AND DOMESTIC								
						Supplemental Information		
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Name	POD ID
16 S	12 E	WM	31	NW SE	0.100	1200	J. Gisler	3
16 S	12 E	WM	31	NW SE	0.150	1203	J. Gisler	3
16 S	12 E	WM	31	NW SE	0.150	1205	J. Gisler	3
16 S	12 E	WM	31	NW SE	0.050	1202	J. Gisler	3
16 S	12 E	WM	31	NW SE	0.026	1105	J. Gisler	3
16 S	12 E	WM	31	NW SE	0.050	1107	J. Gisler	3
16 S	12 E	WM	31	NW SE	0.050	1104	J. Gisler	3
TOTAL					1.390			

8. Notice of the application for transfer was published on March 22, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. On September 7, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11210 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 7, 2011, 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.
10. On November 16, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11210 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 22, 2011, and in The Bulletin newspaper on December 2, 9, and 16, 2011, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
11. 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.

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. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
13. A diversion structure and ditch 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-11210.
14. The proposed changes would not result in enlargement of the right.
15. The proposed changes would not result in injury to other water rights.

Conclusions of Law

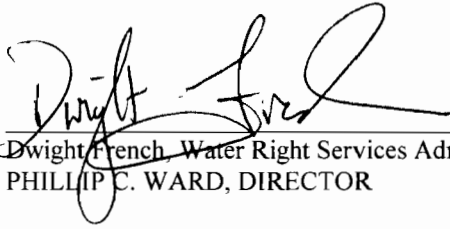
The additional point of diversion and change in place of use proposed in Transfer Application T-11210 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The additional point of diversion and change in place of use proposed in Transfer Application T-11210 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 76619 and any related decree.
3. Water right certificate 76619 is modified. The Department will issue a superseding certificate describing the right when it determines that it is necessary for record keeping.
4. The quantity of water diverted at the additional point of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.
5. 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 point of diversion.
 - b. The water user shall maintain the meters or measuring devices in good working order.
 - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
6. 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.
7. The former place of use of the transferred right shall no longer receive water under the right.

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

Dated at Salem, Oregon this 18 day of January 2012.



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

Mailing date: JAN 20 2012