

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

In the Matter of Transfer Application)	FINAL ORDER
T-12492, Malheur County)	APPROVING AN ADDITIONAL POINT
)	OF DIVERSION, A CHANGE IN
)	PLACE OF USE, AND A PARTIAL
)	CANCELLATION OF A WATER
)	RIGHT

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

JOHN B FERGUSON
6451 WEST GOWEN RD
BOISE ID 83709

Findings of Fact

1. On September 26, 2016, JOHN B. FERGUSON filed an application for an additional point of diversion and a change in place of use under Certificate 1412. The Department assigned the application number T-12492.
2. Notice of the application for transfer was published on October 4, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 15, 2017, the applicant submitted a copy of the ALS land survey of the ground involved in this transfer, confirming the re-description of the rights.

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.

4. On June 23, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12492 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 24, 2017, 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.
5. On August 16, 2017, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12492 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on August 22, 2017, and in the Argus Observer newspaper on August 23 and 30, 2017, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
6. The right to be transferred is as follows:

Certificate: 1412 in the name of F. CUSHING MOORE (perfected under Permit S-826)
Use: IRRIGATION OF 192.0 ACRES
Priority Date: AUGUST 26, 1911
Rate: 1.95 CUBIC FEET PER SECOND
Source: SNAKE RIVER, a tributary to the COLUMBIA RIVER

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Type of Change
16 S	47 E	WM	25		1	32.4	APOD
16 S	47 E	WM	25		2	23.5	APOD
16 S	47 E	WM	25		2	1.6	APOD & POU
16 S	47 E	WM	25	SW NE		39.0	APOD & re-description
16 S	47 E	WM	25	SE NE		39.0	APOD & re-description
16 S	47 E	WM	25	NW SE		40.0	APOD & re-description
16 S	48 E	WM	30		2	17.0	APOD
Total						192.5	

7. Certificate 1412 does not describe the location of the point of diversion, however information is available from a land survey conducted to prepare this transfer application indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
16 S	47 E	WM	25	SW SE	2	NORTH 89°37'40" EAST 2674.30 FEET FROM THE SW CORNER OF SECTION 25

8. Certificate 1412 describes the authorized place of use as 118.0 acres in the SW NE, SE NE, and NW SE quarter-quarter sections, Section 25, T. 16S, R. 47E, Willamette Meridian, Malheur County, Oregon.

a. A land survey completed by ALS Surveyors of Middleton, Idaho, in October 2007 found the acreage in some of the quarter-quarters within the authorized place of use in Section 25, T.16S, R. 47E, WM to be different from that shown in the final proof survey and in Certificate 1412, because of a difference in understanding of the location of the ¼ ¼ corners, as well as having newer technology for measuring the land area. The following table lists those portions of the place of use in Section 25, T16S, R47E, WM as described in existing Certificate 1412 and a proposed re-description based on the above findings:

Original Description of Place of Use		Proposed Re-Description of Place of Use	
¼-¼	Acres	¼-¼	Acres
SW NE	39.0	SW NE	39.3
SE NE	39.0	SE NE	39.1
NW SE	40.0	NW SE	39.1
Total	118.0	Total	117.5

b. The re-description of the right results in a net measurement of the area that is 0.5 acre less than the original description. The area on the ground has not changed, leading the Department to conclude that the area of the water right in these ¼ ¼'s has always been 117.5 acres, rather than 118.0 acres.

9. Transfer Application T-12492 proposes to change the place of use of 1.6 acres identified in Finding of Fact No. 5 to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
16 S	48 E	WM	30		2	1.6

10. The proposed configuration of the transferred and re-described place of use for the right is:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
16 S	47 E	WM	25		1	32.4
16 S	47 E	WM	25		2	23.5
16 S	47 E	WM	25	SW NE		39.3
16 S	47 E	WM	25	SE NE		39.1
16 S	47 E	WM	25	NW SE		39.1
16 S	48 E	WM	30		2	18.6
Total						192.0

11. Transfer Application T-12492 also proposes an additional point of diversion approximately 0.28 mile downstream located:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
16S	47E	WM	25	SW SE	2	NORTH 77°35'43" EAST 4010.52 FEET FROM THE SW CORNER OF SECTION 25

12. 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)]

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 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-12492.
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.

Partial Cancellation of a Water Right

17. On September 26, 2016, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from John B. Ferguson, landowner. The right to be cancelled is as follows:

Certificate: 1412 in the name of F. CUSHING MOORE (perfected under Permit S-826)
Use: IRRIGATION OF 4.1 ACRES
Priority Date: AUGUST 26, 1911
Rate: 0.05 CUBIC FOOT PER SECOND
Source: SNAKE RIVER, tributary to the COLUMBIA RIVER

Authorized Place of Use to be Cancelled:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
16 S	47 E	WM	25		1	4.1

Conclusions of Law

The additional point of diversion and change in place of use proposed in Transfer Application T-12492 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled.

Now, therefore, it is ordered:

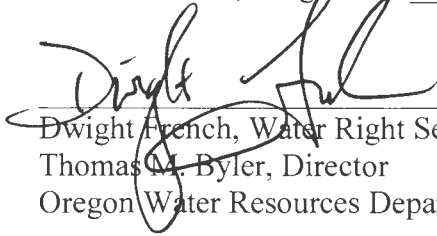
1. The additional point of diversion and change in place of use proposed in Transfer Application T-12492 are approved. The portion of the right that has been abandoned is cancelled.
2. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 1412 and any related decree.
3. Water right Certificate 1412 is cancelled.
4. The quantity of water diverted at the additional point of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point 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 (new and existing).
 - 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 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.

7. The former place of use of the transferred right shall no longer receive water under the right.

8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2019**. 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. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 10th day of October, 2017.



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

Mailing date: OCT 18 2017