

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

In the Matter of Permit Amendment)
T-12135, Morrow County) **FINAL ORDER**
) **APPROVING AN ADDITIONAL POINT**
) **OF DIVERSION**

Authority

Oregon Revised Statute (ORS) 537.211 establishes the process in which a water right permit holder may submit a request to change the point of diversion and/or place of use authorized under an existing water right permit.

Applicant

MATT MCELLIGOTT
49026 HWY 30
NORTH POWDER, OR 97867

Findings of Fact

1. On August 17, 2015, MATT MCELLIGOTT filed an application for an additional point of diversion under Permit S-54839. The Department assigned the application number T-12135.
2. The permit holder, WILLOW CREEK DISTRICT IMPROVEMENT COMPANY, provided consent, for the applicant to amend Permit S-54839.
3. On October 30, 2015, the Department approved an extension of time for complete application of water to October 1, 2030.
4. Notice of the application for the permit amendment was published in the Department's weekly notice on August 25, 2015, and in the Heppner Gazette Times newspaper on December 23 and 30, 2015, pursuant to ORS 540.520(5). No comments were filed in response to the notices.
5. Permit Amendment Application T-12135 proposes an additional point of diversion approximately 1.0 mile downstream from the existing points of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	24 E	WM	12	SW NW	POD 2 - 2100 FEET SOUTH AND 30 FEET EAST FROM THE NW CORNER OF SECTION 12

6. 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

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 and OAR 690-01-0005 you may either 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.

the diversion is not currently equipped with an appropriate fish screen. Listed fish species are not present at the point of diversion, the originating water right diversion is not screened, cost-share funds are not currently available, and the proposed diversion may be eligible for ODFW's cost-share program. A grace period of two years is appropriate until such time as cost-share funds become available to assist in the construction of a fish screen. If cost-share funds do not become available, the water user must screen within the indicated time period regardless of the availability of cost-share funding.

Permit Amendment Review Criteria

7. The change would not result in injury to other water rights.
8. The change does not enlarge the permit.
9. The change does not alter any other terms of the permit.

Conclusions of Law

The additional point of diversion proposed by Permit Amendment Application T-12135 is consistent with the requirements of ORS 537.211.

Now, therefore, it is ORDERED:

1. The additional point of diversion proposed by Permit Amendment Application T-12135 is approved.
2. Permit S-54980, in the name of WILLOW CREEK DISTRICT IMPROVEMENT COMPANY, is issued to replace Permit S-54839, and incorporates the amendments approved by this order and the order approving Transfer Application T-11664 and the extension of time. Permit S-54839, in the name of WILLOW CREEK DISTRICT IMPROVEMENT COMPANY, is no longer of any force or effect.
3. The combined quantity of water diverted at the new point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
4. Prior to water use from the additional point of diversion, the permittee shall install a ramp measurement flume or weir at the flood ditch on Willow Creek, previously approved by the Department.
5. Prior to water use from the proposed point of diversion, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of diversion. The permittee shall maintain the meter or measuring device in good working order.

The permittee shall keep a complete record of the amount of water used each month, and shall submit a report which includes the recorded water use measurements to the Department by December 1 of each year. Further, the Director may require the permittee to report

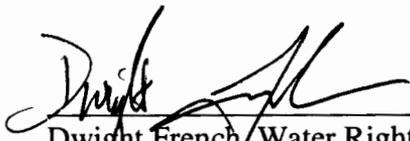
general water use information, including the place and nature of use of water under the permit.

The permittee shall allow the watermaster access to the meter or measuring device; provided however, where any meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

6. By October 1, 2017, the water user shall install an approved fish screen at the new point of diversion. The water user may withdraw water at the new point of diversion without a screen until October 1, 2017. The water user shall provide to 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 maintain and operate 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. Water shall be acquired from the same surface water source as the original points of diversion.
8. The former place of use shall no longer be irrigated as part of this permit.
9. All other terms and conditions of Permit S-54839 remain the same.

Dated at Salem, Oregon this 8 day of February, 2016.



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

Mailing Date: FER 17 2016