

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

In the Matter of Transfer Application)
T-11196, Klamath County)
)
) PRELIMINARY DETERMINATION
) PROPOSING APPROVAL OF AN
) ADDITIONAL POINT OF
) APPROPRIATION

Authority

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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

HORSEFLY IRRIGATION DISTRICT
P.O. BOX 188
BONANZA, OR 97623

Findings of Fact

Background

1. On February 9, 2011, HORSEFLY IRRIGATION DISTRICT filed an application for an additional point of appropriation under Certificate 42738. The Department assigned the application number T-11196.
2. On June 30, 2011, the applicant submitted an amended application, clarifying the place of use.
3. The right to be transferred is as follows:

Certificate: 42738 in the name of HORSEFLY IRRIGATION DISTRICT (perfected under Permit G-3670)
Use: IRRIGATION OF 142.5 ACRES AND SUPPLEMENTAL IRRIGATION OF 604.6 ACRES
Priority Date: APRIL 26, 1967
Rate: 9.34 CUBIC FEET PER SECOND
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-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre feet per acre for each acre irrigated during the irrigation season of

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

each year; provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.

Source: A WELL within the LOST RIVER BASIN

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|--------|-----|-----|-------|---|
| 38 S | 11.5 E | WM | 36 | NW NW | 870 FEET SOUTH AND 310 FEET EAST FROM THE NW CORNER OF SECTION 36 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|--------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 38 S | 11.5 E | WM | 26 | SW SW | 7.0 |
| 38 S | 11.5 E | WM | 26 | SE SW | 16.7 |
| 38 S | 11.5 E | WM | 26 | SW SE | 16.4 |
| 38 S | 11.5 E | WM | 26 | SE SE | 1.5 |
| 38 S | 11.5 E | WM | 27 | NE SE | 9.6 |
| 38 S | 11.5 E | WM | 27 | NW SE | 0.2 |
| 38 S | 11.5 E | WM | 27 | SW SE | 9.6 |
| 38 S | 11.5 E | WM | 27 | SE SE | 27.8 |
| 38 S | 11.5 E | WM | 35 | NE NE | 23.3 |
| 38 S | 11.5 E | WM | 35 | NW NE | 0.1 |
| 38 S | 11.5 E | WM | 35 | SE NE | 0.3 |
| 38 S | 11.5 E | WM | 35 | SE NW | 6.8 |
| 38 S | 11.5 E | WM | 36 | NW NW | 4.8 |
| 38 S | 11.5 E | WM | 36 | SW NW | 18.4 |

| SUPPLEMENTAL IRRIGATION | | | | | |
|-------------------------|--------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 38 S | 11.5 E | WM | 26 | SW SW | 25.2 |
| 38 S | 11.5 E | WM | 26 | SE SW | 23.3 |
| 38 S | 11.5 E | WM | 26 | SW SE | 7.2 |
| 38 S | 11.5 E | WM | 27 | SW SE | 6.4 |
| 38 S | 11.5 E | WM | 27 | SE SE | 12.60 |
| 38 S | 11.5 E | WM | 34 | NE NE | 39.6 |
| 38 S | 11.5 E | WM | 34 | NW NE | 36.8 |
| 38 S | 11.5 E | WM | 34 | SW NE | 36.8 |
| 38 S | 11.5 E | WM | 34 | SE NE | 40.0 |
| 38 S | 11.5 E | WM | 34 | NE NW | 8.4 |
| 38 S | 11.5 E | WM | 34 | SW NW | 4.0 |
| 38 S | 11.5 E | WM | 34 | SE NW | 27.2 |
| 38 S | 11.5 E | WM | 34 | NW SE | 39.6 |
| 38 S | 11.5 E | WM | 35 | NE NE | 13.8 |
| 38 S | 11.5 E | WM | 35 | NW NE | 33.2 |
| 38 S | 11.5 E | WM | 35 | SW NE | 25.8 |
| 38 S | 11.5 E | WM | 35 | NE NW | 38.4 |
| 38 S | 11.5 E | WM | 35 | NW NW | 37.0 |
| 38 S | 11.5 E | WM | 35 | SW NW | 33.2 |
| 38 S | 11.5 E | WM | 35 | SE NW | 32.0 |
| 38 S | 11.5 E | WM | 35 | NE SW | 39.2 |
| 38 S | 11.5 E | WM | 35 | NW SW | 39.6 |

| SUPPLEMENTAL IRRIGATION | | | | | |
|-------------------------|--------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 38 S | 11.5 E | WM | 35 | NW SE | 5.3 |

4. Transfer Application T-11196 proposes an additional point of appropriation approximately 4200 feet northwest from the existing point of appropriation to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|--|
| 38 S | 11 E | WM | 26 | SE SW | 300 FEET NORTH AND 1500 FEET EAST OF THE SW CORNER OF SECTION 26 |

5. Notice of the application for transfer was published on February 15, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. To lessen the risk of injury to domestic wells completed in the basin fill only and to be consistent with current well construction rules, the new proposed well needs to be constructed to obtain groundwater from the basalt only with continuous casing and seal through the basin fill to basalt.
7. On July 1, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11196 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 1, 2011, for the applicant to respond. On July 6, 2011, the applicant's agent 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.

Transfer Review Criteria (OAR 690-380-4010)

8. 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.
9. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11196.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The additional point of appropriation proposed in Transfer Application T-11196 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

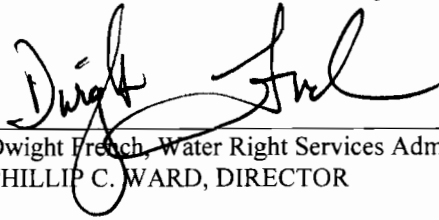
If Transfer Application T-11196 is approved, the final order will include the following:

- The additional point of appropriation proposed in Transfer Application T-11196 is 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 42738 and any related decree.*
3. *Water right certificate 42738 is cancelled*
4. *The quantity of water diverted at the additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
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 appropriation.*
 - 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. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
7. *The former place of use of the transferred right shall no longer receive water under the right.*
8. *The proposed well is to be constructed to obtain groundwater from the basalt only with continuous casing and seal through the basin fill to basalt.*
9. *The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. 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 change and full beneficial use of the water.*

10. *When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 7 day of July 2011.



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

This Preliminary Determination was prepared by Teri Hranac. If you have questions about the information in this document, you may reach me at 503-986-0881 or Teri.K.Hranac@wrд.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.