

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

In the Matter of Transfer Application) **FINAL ORDER**
T-11548, Union County) **APPROVING CHANGES IN POINTS**
) **OF DIVERSION**

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.

Applicants		Agents
Robert C. and Sharon E. Richards PO Box 536 Union, OR 97883 Southern Cross Ltd. Ralph & Debra Eyre P.O. Box 567 Union, OR 97883 e-mail: ralph@ralpheyre.us	Douglas W. Kinsley P.O. Box 634 Union, OR 97883	Craig Schellsmidt Union SWCD La Grande, OR 97850 e-mail: unionswcd@hotmail.com Mike Posada Anderson Perry & Assoc Inc. 1901 N. Fir Street La Grande, OR 97850 e-mail: mposada@andersonperry.com

Findings of Fact

Background

1. On March 14, 2013, Robert C. and Sharon E. Richards, Southern Cross Ltd, and Douglas Kinsley, filed an application to change the points of diversion under Certificates 6271, 6587, and 6602. The Department assigned the application number T-11548.
2. Notice of the application for transfer was published on March 19, 2013, pursuant to OAR 690-380-5050. No comments were filed in response to the notice.
3. On May 31, 2013, the agent requested that the completion date of the transfer be extended until October 1, 2018.
4. On June 18, 2013, the Department sent a copy of the Draft Preliminary Determination proposing to deny Transfer Application T-11548 to the applicants. The applicants requested

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.

that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

5. On May 31, 2013, the agent for the applicants requested that the Department seek a recommendation from the Oregon Department of Fish and Wildlife as to whether the Department should consent to injury of the instream water right pursuant to OAR 690-380-5050.
6. On August 1, 2013, the Department issued a Preliminary Determination proposing to deny Transfer Application T-11548 unless ODFW recommended consent to injury of an instream water right, and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on August 6, 2013, and in the Walla Walla Union Daily Bulletin newspaper on August 16 and 23, 2013, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
7. On August 5, 2013, a request was sent to ODFW for recommendations concerning consent to injury of the instream water right under Certificate 59537.
8. On May 6, 2014, a recommendation was received from ODFW for consent to injury.
9. Notice of ODFW's Consent to Injury recommendations was published on June 10, 2014, pursuant to OAR 690-380-5050. No comments or requests for a public meeting were filed in response to the notice.
10. The first right to be transferred is as follows:

Certificate: 6271 in the name of E. A. FUHER (confirmed by Grande Ronde River Decree)
Use: IRRIGATION of 43.0 ACRES
Priority Date: 1866
Limit/Duty: The amount of water used for irrigation is limited to a diversion of ONE-FORTIETH of one cubic foot per second 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 each year.
Source: CATHERINE CREEK, tributary to the GRANDE RONDE RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	40 E	WM	28	SW SE	17.5
4 S	40 E	WM	28	SE SE	2.0
4 S	40 E	WM	33	NE NE	20.0
4 S	40 E	WM	33	NW NE	1.5
4 S	40 E	WM	33	SE NE	2.0
Total Acres:					43.0

11. Certificate 6271 does not describe the location of the point of diversion, however information is available from the adjudication tabulation, transfer application, and transfer application map which indicates the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	40 E	WM	34	SW NW	E.A. FUHER DITCH AKA KINSLEY POD 1 - 7250 FEET SOUTH AND 5740 FEET EAST FROM THE NW CORNER OF SECTION 28

12. Transfer Application T-11548 proposes to move the authorized point of diversion approximately 1650 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	40 E	WM	34	NE SW	POD #3 SAMS AND MILES - 8990 FEET SOUTH AND 8000 FEET EAST FROM THE NW CORNER OF SECTION 28

13. The second right to be transferred is as follows:

Certificate: 6587 in the name of A. N. STONEDAHL (confirmed by Grande Ronde River Decree)

Priority Date: 1866 for 10.5 acres in TRACT 1 and 1897 for 25.4 acres in TRACT 2

Limit/Duty: The amount of water used for irrigation is limited to a diversion of ONE-FORTIETH of one cubic foot per second 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 each year.

Source: CATHERINE CREEK, tributary to the GRANDE RONDE RIVER

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Priority Date	Tract	Acres
4 S	40 E	WM	28	NE SW	1897	2	20.0
4 S	40 E	WM	28	SE SW	1897	2	5.4
4 S	40 E	WM	28	NW SE	1866	1	3.0
4 S	40 E	WM	28	SW SE	1866	1	7.5
Total Acres:							35.9

14. Certificate 6587 does not describe the location of the point of diversion, however information is available from the adjudication tabulation, transfer application, and transfer application map which indicates the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	TRACT	Measured Distances
4 S	40 E	WM	34	SW NW	1	FUHER DITCH AKA KINSLEY POD 1 - 7250 FEET SOUTH AND 5740 FEET EAST FROM THE NW CORNER OF SECTION 28
4 S	40 E	WM	28	SW SE	2	MOSES LORE AKA RICHARDS POD 1 - 5080 FEET SOUTH AND 2910 FEET EAST FROM THE NW CORNER OF SECTION 28

15. Transfer Application T-11548 proposes to move the authorized points of diversion approximately one mile upstream from the authorized Moses Lore Diversion and 1650 feet upstream from the authorized E.A. Fuher diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	40 E	WM	34	NE SW	POD #3 SAMS AND MILES - 8990 FEET SOUTH AND 8000 FEET EAST FROM THE NW CORNER OF SECTION 28

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

Certificate: 6602 in the name of W. H. THOMASON (confirmed by Grande Ronde River Decree)

Use: IRRIGATION of 15.5 ACRES

Priority Date: 1897 for TRACT 1

Limit/Duty: The amount of water used for irrigation is limited to a diversion of ONE-FORTIETH of one cubic foot per second 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 each year.

Source: CATHERINE CREEK, tributary to the GRANDE RONDE RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	40 E	WM	28	SE NW	3.0
4 S	40 E	WM	28	NE SW	12.5
Total Acres:					15.5

17. Certificate 6602 does not describe the location of the point of diversion, however information is available from the adjudication tabulation, transfer application, and transfer application map which indicates the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	TRACT	Measured Distances
4 S	40 E	WM	28	SW SE	1	MOSES LORE AKA RICHARDS POD 1 - 5080 FEET SOUTH AND 2910 FEET EAST FROM THE NW CORNER OF SECTION 28

18. Transfer Application T-11548 proposes to move the authorized points of diversion approximately 1650 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	40 E	WM	34	NE SW	POD #3 SAMS AND MILES: 8990 FEET SOUTH AND 8000 FEET EAST FROM THE NW CORNER OF SECTION 28

19. On June 20, 2013, 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)]

20. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
21. A diversion structure and ditch 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-11548.
22. The proposed changes would not result in enlargement of the rights.
23. An instream water right, Certificate 59537, exists for the reach of the river in which the authorized points of diversion would be moved upstream, and streamflows within the reach are frequently below the levels allocated under the instream water right. Thus, the instream water right would be injured as a result of the proposed changes in points of diversion.

Conclusions of Law

Based upon the recommendation of the Oregon Department of Fish and Wildlife, the Department consents to injury of the instream water rights evidenced by Certificate 59537. The changes in points of diversion proposed in Transfer Application T-11548 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in points of diversion proposed in application T-11548 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 Certificates 6271, 6587, and 6602 and any related decree.
3. Water right certificates 6271, 6587, and 6602 are cancelled. A new certificate will be issued describing that portion of Certificate 6602 that was not affected by this transfer.
4. The quantity of water diverted at the new point 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, with prior approval of the Director, a weir, submerged orifice or another suitable measuring device, at the proposed point of diversion (Sam and Miles diversion).
 - b. The water user shall maintain the measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the measuring device; provided however, where the measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
6. Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.
7. 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.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2018**. 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.
9. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 15 day of August, 2014.



Dwight French, Water Right Services Administrator, for
Director
Oregon Water Resources Department

Mailing date: AUG 19 2014