

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

In the Matter of Transfer Application            )    FINAL ORDER APPROVING A  
T-10569, Polk County                            )    CHANGE IN POINT OF DIVERSION,  
  )    AND 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**

CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON  
ATTN: ERIC SCOTT  
9615 GRAND RONDE ROAD  
GRAND RONDE OR 97347

**Findings of Fact**

**Background**

1. On March 24, 2008, Eric Scott filed a Transfer Application on behalf of the Confederated Tribes of the Grand Ronde Community, to change the place of use and point of diversion under Certificates 36796 and 50623. The Department assigned the application number T-10569.
2. The transfer map originally filed did not show the source stream or divide the acreage proposed to be transferred under Certificate 50623 into each of Government Lots 27 and 28 in the SE SW of Section 5, T6S, R7W. However, on November 18, 2009, the applicant submitted a revised map, showing Cosper Creek as the source of water for transfer and showing the breakdown of acreage between Government Lots 27 and 28.

3. The first right to be transferred is as follows:

**Certificate:** 36796 in the name of GEORGE J. KOCHIS (perfected under Permit S-29131)  
**Use:** IRRIGATION of 0.7 ACRE

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.

**Priority Date:** OCTOBER 9, 1963

**Rate:** 0.01 CUBIC FOOT PER SECOND

**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre during the irrigation season of each year

**Source:** COSPER CREEK, tributary to SOUTH YAMHILL RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
6 S	7 W	WM	8	NE NW	2	230 FEET SOUTH AND 1080 FEET WEST FROM THE N1/4 CORNER OF SECTION 8

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
6 S	7 W	WM	8	NE NW	2	0.7

4. Application T-10569 proposes to move the authorized point of diversion approximately 250 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
6 S	7 W	WM	8	NE NW	6	24 FEET SOUTH AND 1220 FEET WEST FROM THE N1/4 CORNER OF SECTION 8

5. Application T-10569 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
6 S	7 W	WM	5	SE SW	28	0.7

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

**Certificate:** 50623 in the name of CLIFFORD H. ELLIS (perfected under Permit S-41267)

**Use:** IRRIGATION of 4.8 ACRES

**Priority Date:** DECEMBER 1, 1976

**Rate:** 0.06 CUBIC FOOT PER SECOND

**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre during the irrigation season of each year

**Source:** COSPER CREEK, tributary to SOUTH YAMHILL RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
6 S	7 W	WM	8	NE NW	2	230 FEET SOUTH AND 1060 FEET WEST FROM THE N1/4 CORNER OF SECTION 8

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
6 S	7 W	WM	8	NE NW	2	4.8

7. Application T-10569 proposes to move the authorized point of diversion approximately 260 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
6 S	7 W	WM	8	NE NW	6	24 FEET SOUTH AND 1220 FEET WEST FROM THE N1/4 CORNER OF SECTION 8

8. Application T-10569 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
6 S	7 W	WM	5	SE SW	27	3.0
6 S	7 W	WM	5	SE SW	28	1.8

9. Notice of the application for transfer was published on April 15, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
10. 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.
11. On September 10, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10569 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 30, 2009, for the applicant to respond and submit a revised map and ownership report. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided a revised map and the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
12. On December 17, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10569 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 December 22, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

***Transfer Review Criteria [OAR 690-380-4010(2)]***

13. The right was leased instream under L-781 during the period August 17, 2006 to September 30, 2008 and 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 Application T-10569.
15. The proposed change would not result in enlargement of the right.
16. The proposed change would not result in injury to other water rights.

**Conclusions of Law**

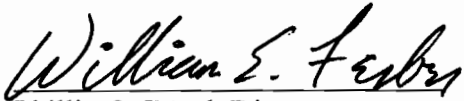
The changes in place of use and point of diversion proposed in application T-10569 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The changes in place of use and point of diversion proposed in application T-10569 are approved.
2. Water right Certificates 36796 and 50623 are cancelled.
3. 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 36796 and 50623 and any related decree.
4. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
5. The former place of use of the transferred right shall no longer receive water under the right.
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. 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.
8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. A Claim of Beneficial Use prepared by a Certified Water Rights 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, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 26<sup>th</sup> day of January 2010.

  
For Phillip C. Ward, Director

Mailing date: JAN 29 2010

