

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-10968, Lane County)	CHANGE IN POINT OF DIVERSION
)	AND RE-DIVERSION, A CHANGE IN
)	PLACE OF USE, A CHANGE IN
)	CHARACTER OF USE, PARTIAL
)	CANCELLATION OF A WATER
)	RIGHT AND CANCELLATION OF AN
)	ENTIRE WATER RIGHT

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.

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 a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

MORSE BROS. INC.
DBA KNIFE RIVER, AND MDU RESOURCES COMPANY
ATTN: JEFF STEYAERT
32260 OLD HWY 34
TANGENT, OR 97389

Findings of Fact

Background

1. On October 21, 2009, MORSE BROS. INC., DBA KNIFE RIVER, AN MDU RESOURCES GROUP filed an application to change the point of diversion and re-diversion, place of use, and character of use under Certificate 35753. The Department assigned the application number T-10968.

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.

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

Certificate: 35753 in the name of SPRINGFIELD SAND AND GRAVEL CO.
(perfected under Permit S-29217)
Use: MANUFACTURING (WASHING GRAVEL)
Priority Date: OCTOBER 16, 1963
Rate: 1.3 CUBIC FEET PER SECOND
Limit/Duty: The right to use water is limited to the period when the flow of the Middle Fork Willamette River is more than 1025 cubic feet per second at its mouth. This right is subject to maintenance and use of adequate treatment facilities to remove the sediment before returning the water to the stream.
Source: THE MIDDLE FORK WILLAMETTE RIVER THROUGH GEORGIA PACIFIC MILL RACE, tributary to the WILLAMETTE RIVER

Authorized Points of Diversion:

TWP	RNG	MER	SEC	Q-Q	DLC	MEASURED DISTANCES
18 S	2 W	WM	8	NW NW	50	RIVER - 1150 FEET SOUTH AND 400 FEET WEST FROM THE SW CORNER OF ARTHUR DLC 63
18 S	3 W	WM	1	NE NW	39	MILL RACE RE-DIVERSION - NORTH 38°3'55" EAST 3032.46 FEET FROM THE W¼ CORNER OF SECTION 1

Authorized Place of Use:

MANUFACTURING (GRAVEL WASHING)					
TWP	RNG	MER	SEC	Q-Q	GLOT
18 S	3 W	WM	1	NE NW	11

3. Transfer Application T-10968 proposes to change the character of use to industrial and mining.
4. Transfer Application T-10968 proposes to move the authorized points of diversion approximately 1775 feet upstream on the river and 470 feet upstream on the mill race to:

TWP	RNG	MER	SEC	Q-Q	GLOT	MEASURED DISTANCES
18 S	2 W	WM	8	NE NW	9	RIVER - 460 FEET SOUTH AND 70 FEET WEST FROM THE N¼ CORNER OF SECTION 8
18 S	3 W	WM	1	NE NW		MILL RACE RE-DIVERSION - 380 FEET SOUTH AND 2270 FEET EAST FROM THE NW CORNER OF SECTION 1

5. Transfer Application T-10968 proposes to change the place of use of the right to:

INDUSTRIAL AND MINING					
TWP	RNG	MER	SEC	Q-Q	GLOT
18 S	3 W	WM	1	NW NE	
18 S	3 W	WM	1	NE NW	11
18 S	3 W	WM	1	NW NW	12
18 S	3 W	WM	1	SW NW	
18 S	3 W	WM	1	SE NW	10
18 S	3 W	WM	1	NE SW	3
18 S	3 W	WM	1	NW SW	

INDUSTRIAL AND MINING					
TWP	RNG	MER	SEC	Q-Q	GLOT
18 S	3 W	WM	1	SW SW	4
18 S	3 W	WM	1	SE SW	3
18 S	3 W	WM	2	NE NE	10
18 S	3 W	WM	2	NW NE	9
18 S	3 W	WM	2	SW NE	
18 S	3 W	WM	2	SE NE	11
18 S	3 W	WM	2	NE SE	12

6. Notice of the application for transfer was published on October 27, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On November 17, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10968 to the applicant. The cover letter for the draft Preliminary Determination set forth a deadline of December 20, 2010, 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.
8. 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.
9. On December 13, 2010, the Department issued a Preliminary Determination proposing to approve Transfer T-10968 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 14, 2010, and in the Register-Guard newspaper on January 7, January 14 and January 21 2011, pursuant to ORS 540.520 and OAR 690-380-4020.
10. On February 18, 2011, Springfield Utility Board timely submitted a Protest of the Preliminary Determination. No other timely protests were received by the Department.
11. On August 17, 2011, the Department, Knife River Corporation – Northwest (applicant Morse Bros. Inc. DBA Knife River, and MDU Resources Company) and Springfield Utility Board entered into a settlement agreement pursuant to which Springfield Utility Board withdrew its protest of the Preliminary Determination. This Final Order reflects modifications agreed upon as a result of the settlement agreement.

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

12. Water has been used within the five-year period prior to submittal of the transfer application 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.

13. A pump and pipeline system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-10968.
14. The proposed changes would not result in enlargement of the right.
15. The proposed changes would not result in injury to other water rights.

Partial Cancellation of a Water Right

16. On October 21, 2009, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Jeff Steyaert of Morse Bros., Inc., DBA Knife River, and MDU Resources Co. The right to be cancelled is as follows:

Certificate: 35753 in the name of SPRINGFIELD SAND AND GRAVEL COMPANY (perfected under Permit S-29217)

Use: IRRIGATION OF 34.7 ACRES

Priority Date: OCTOBER 16, 1963

Rate: 0.43 CUBIC FOOT 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: MIDDLE FORK WILLAMETTE RIVER THROUGH GEORGIA PACIFIC MILL RACE, tributary to the WILLAMETTE RIVER

Authorized Points of Diversion:

TWP	RNG	MER	SEC	Q-Q	DLC	MEASURED DISTANCES
18 S	2 W	WM	8	NW NW	50	RIVER - 1150 FEET SOUTH AND 400 FEET WEST FROM THE SW CORNER OF ARTHUR DLC 63
18 S	3 W	WM	1	NE NW	39	MILL RACE RE-DIVERSION - NORTH 38°3'55" EAST 3032.46 FEET FROM THE W¼ CORNER OF SECTION 1

Authorized Place of Use to be Cancelled:

IRRIGATION						
TWP	RNG	MER	SEC	Q-Q	GLOT	ACRES
18 S	3 W	WM	1	NE NW	11	2.6
18 S	3 W	WM	1	NW NW	12	26.8
18 S	3 W	WM	1	SW NW		5.3

Cancellation of an entire Water Right

17. On October 21, 2009, an affidavit certifying that an entire water right has been abandoned and requesting cancellation of the right was received from Jeff Steyaert of Morse Bros., Inc., DBA Knife River, and MDU Resources Co. The right to be cancelled is as follows:

Certificate: 10813 in the name of PRATT HOLVERSON (perfected under Permit S-10859)
Use: STOCK WATER
Priority Date: APRIL 8, 1933
Rate: 0.1 CUBIC FOOT PER SECOND
Limit/Duty: Limited to the water available at the proposed point of diversion, and does not carry with it the right to divert water from the stream from which the waste water is diverted nor the right to require the wasteful use of water by others
Source: OVERFLOW CHANNEL FROM BOOTH KELLY LUMBER COMPANY MILL RACE, tributary to the WILLAMETTE RIVER

Authorized Point of Diversion:

TWP	RNG	MER	SEC	Q-Q	GLOT
18 S	3 W	WM	1	SE NW	10

Authorized Place of Use to be Cancelled:

LIVESTOCK					
TWP	RNG	MER	SEC	Q-Q	GLOT
18 S	3 W	WM	1	SE NW	10

Conclusions of Law

The changes in point of diversion and re-diversion, place of use, and character of use proposed in Transfer Application T-10968 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned rights should be cancelled. The application is approved pursuant to the terms and conditions below, and the abandoned rights are cancelled.

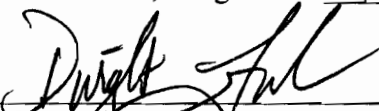
Now, therefore, it is ORDERED:

1. The changes in point of diversion and re-diversion, place of use, and character of use proposed in Transfer Application T-10968 are approved.
2. The portion of the right described by Certificate 35753 that has been abandoned is cancelled.
3. The right described by Certificate 10813 has been abandoned and is cancelled.
4. 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 35753 and any related decree.
5. Water right certificates 35753 and 10813 are cancelled.
6. 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.
7. The water user shall collect any excess or return flow from the water diverted under this right in the existing settling basins located in NENW, Section 1, T18S, R3W, W.M. Any

water discharged from the settling basins shall be discharged into the overflow channel of the Mill Race (also known as Quarry Creek) at the same location as the water user had discharged water prior to filing transfer application T-10968.

8. The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.
9. When required by the Department, the water user shall install, maintain and operate 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.
10. 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.
11. The approved changes 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 changes and full beneficial use of the water.
12. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred, including the above conditions, will be issued.

Dated at Salem, Oregon this 16 day of August 2011.


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

Mailing Date: AUG 17 2011