

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

In the Matter of Transfer Application) FINAL ORDER APPROVING AN
T-12759, Baker County) ADDITIONAL POINT OF DIVERSION

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

KYLE AND CHARITY RANSOM
40271 HWY 86
RICHLAND, OR 97870
kransom@eagletelephone.com

Findings of Fact

1. On October 10, 2017, Kyle and Charity Ransom filed an application for an additional point of diversion under Certificates 4754 and 4772. The Department assigned the application number T-12759.
2. Notice of the application for transfer was published on October 17, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 18, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12759 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of February 19, 2018, for the applicants to respond. The applicants requested 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.

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.

4. On April 5, 2018, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12759 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on April 10, 2018, and in the Hells Canyon Journal newspaper on April 11 and April 18, 2018, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

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

Certificate: 4754 in the name of JOEL O. TUTTLE (confirmed by the Powder River Decree Volume 5, Page 322)

Use: IRRIGATION of 10.5 ACRES

Priority Date: 1886

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE-FORTIETH of one cubic foot per second per acre, and shall be subject to all other conditions and limitations contained in said decree.

Source: EAGLE CREEK, tributary to the POWDER RIVER

Authorized Point of Diversion: Not described on Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	23	SE SE	10.5

6. Certificate 4754 does not describe the location of the point of diversion, however information is available from Certificate 89274 and the CWRE's survey indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	45 E	WM	10	SE NW	KAY YOUNG DITCH - 940 FEET NORTH AND 190 FEET WEST FROM THE CENTER ¼ CORNER OF SECTION 10

7. Transfer Application T-12759 proposes an additional point of diversion approximately 2.3 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	45 E	WM	33	SE NW	NEWT YOUNG DITCH - 1950 FEET SOUTH AND 1400 FEET EAST FROM THE NW CORNER OF SECTION 33

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

Certificate: 4772 in the name of W.B. WRIGHT (confirmed by Powder River Decree)

Use: IRRIGATION of 33.8 ACRES

Priority Date: 1886

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE-FORTIETH of one cubic foot per second per acre, and shall be subject to all other conditions and limitations contained in said decree.

Source: EAGLE CREEK, tributary to the POWDER RIVER

Authorized Point of Diversion: Not described on Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	23	NE SE	27.3
9 S	45 E	WM	23	SE SE	6.5
Total					33.8

9. Certificate 4772 does not describe the location of the point of diversion, however information is available from Certificate 89274 and the CWRE's survey indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	45 E	WM	10	SE NW	KAY YOUNG DITCH - 940 FEET NORTH AND 190 FEET WEST FROM THE CENTER ¼ CORNER OF SECTION 10

10. Transfer Application T-12759 proposes an additional point of diversion approximately 2.3 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	45 E	WM	33	SE NW	NEWT YOUNG DITCH - 1950 FEET SOUTH AND 1400 FEET EAST FROM THE NW CORNER OF SECTION 33

11. 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. 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 five 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.

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

12. 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.
13. 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-12759.
14. The proposed change would not result in enlargement of the rights.
15. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

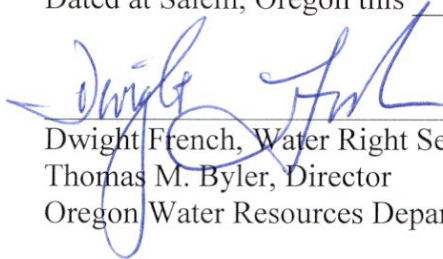
The additional point of diversion proposed in Transfer Application T-12759 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The additional point of diversion proposed in Transfer Application T-12759 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 Certificates 4754 and 4772 and any related decree.
3. Water right Certificates 4754 and 4772 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.
4. The quantity of water diverted at the additional point of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
5. Water use measurement conditions:
 - a. Before water use, the water user shall install a ramp flume or Parshall flume, or with prior approval of the Director, another suitable measuring device, at each new point of 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. Before water use, 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. By October 1, 2023, or within five years after the date of this order 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, 2023. 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.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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 JUN 04 2018.



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

Mailing date: JUN 05 2018