

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

In the Matter of Transfer Application)
T-7533, Umatilla County)
)
) FINAL ORDER DENYING A 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

J. R. SIMPLOT COMPANY
P.O. BOX 27
BOISE, ID 83707

Findings of Fact

Background

1. On March 28, 1996, the J.R. Simplot Company filed an application to change the place of use and point of diversion under Certificates 2682, 2691 and 8795. The Department assigned the application number T-7533.
2. Since the original filing, Certificate 2682 has been cancelled and was superseded by Certificates 76738 and 76737. Water right Certificate 2691 has been cancelled and was superseded by Certificates 76724 and 76725. Certificate 8795 remains a non-cancelled water right.

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

Certificate: 2682* in the name of Effie Rhea (confirmed by the Umatilla River Decree)

Use: Irrigation of 30.0 acres and Stock Water

Priority Date: 1870

Quantity: 0.50 cubic foot per second (cfs)

Source: Butter Creek, tributary to Umatilla River

***Note:** Certificate 2682 was cancelled during Westland Irrigation District's (WID) House Bill 3111 re-mapping project and was superseded by Certificates 76738, in the

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may either 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.

name of J. R. Simplot Company, Ronald N. Graves, V.P., and 76737, in the names of Donald and Phyllis Bennett, Douglas and Gladys Bennett for Oregon Hereford Ranch. The entirety of Certificate 2682 was diminished to supplemental irrigation.

Authorized Place of Use (as listed on Certificate 2682):

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	ACRES
3 N	28 E	WM	8	NE NW	30

4. Certificate 2682 did not describe the location of the point of diversion, however information is available from the application and a map prepared by the Certified Water Rights Examiner (CWRE) indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 N	28 E	WM	19	SE NW	750 FEET WEST FROM THE C ¹ / ₄ CORNER OF SECTION 19; MCBEE DITCH

5. Transfer Application T-7533 proposes to change the place of use of the above described right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	ACRES
3 N	28 E	WM	18	SW NE	15.0
3 N	28 E	WM	18	NW SE	15.0

6. Transfer Application T-7533 also proposes to change the point of diversion approximately 2½ miles downstream from the authorized point of diversion to a point located at:

Proposed Point of Diversion

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 N	28 E	WM	8	NE SW	2500 FEET NORTH AND 1320 FEET EAST FROM THE SW CORNER OF SECTION 8

7. The entirety of the SECOND right to be transferred is as follows:

Certificate: 2691*, in the name of Ralph E. Stanfield

Use: Irrigation of 211.5 acres, domestic and stock

Priority Dates: 1868 and 1875

Rate: 3.50 cfs, being 0.58 cfs under the 1868 priority date and 2.92 cfs under the 1875 priority date

Source: BUTTER CREEK and SPRING BRANCH, tributaries of the UMATILLA RIVER

* Note: Certificate 2691 was cancelled during WID HB 3111 re-mapping project and was superseded by Certificates 76724, in the name of J. R. Simplot Company, Ronald N. Graves, V.P. and 76725, in the name Ralph E. Stanfield.

A portion of Certificate 76724 was diminished to supplemental irrigation.

Authorized Place of Use (as listed on Certificate 2691)

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	ACRES
3 N	28 E	WM	7	SE NE	19.0
3 N	28 E	WM	7	NE SE	31.0
3 N	28 E	WM	7	SW SE	40.0
3 N	28 E	WM	7	SE SE	16.0
3 N	28 E	WM	8	SW NW	20.0
3 N	28 E	WM	8	NW SW	38.0
3 N	28 E	WM	18	NE NE	7.5
3 N	28 E	WM	18	NW NE	40.0
TOTAL:					211.5

8. Certificate 2691 did not describe the location of the point of diversion, however information is available from the application and a map prepared by the CWRE indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 N	28 E	WM	18	NW SE	1650 FEET NORTH AND 100 FEET EAST FROM THE S¼ CORNER OF SECTION 18

9. Transfer Application T-7533 proposes to change the place of use of the above described right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	ACRES
3 N	28 E	WM	7	NE SE	8.0
3 N	28 E	WM	7	NW SE	35.0
3 N	28 E	WM	7	SW SE	38.0
3 N	28 E	WM	7	SE SE	36.0
3 N	28 E	WM	8	SW NW	14.5
3 N	28 E	WM	18	NE NE	35.0
3 N	28 E	WM	18	NW NE	40.0
3 N	28 E	WM	18	SW NE	2.0
3 N	28 E	WM	18	NE SW	3.0
TOTAL:					211.5

10. Transfer Application T-7533 also proposes to change the point of diversion approximately 1½ miles downstream from the authorized point of diversion on Butter Creek to a point located at:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
3 N	28 E	WM	8	NE SW	2500 FEET NORTH AND 1320 FEET EAST FROM THE SW CORNER OF SECTION 8.

11. The entirety of the THIRD right to be transferred is as follows:

Certificate: 8795 in the name of The American National Bank & Henry C. Judd
(perfected under Permit 7550)

Use: Irrigation of 45.0 acres

Priority Date: August 28, 1926

Rate/Duty: 0.56 cfs further limited to 1/80 of one cubic foot per second per acre or its equivalent in case of rotation

Source: BUTTER CREEK, a tributary of the UMATILLA RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q
3 N	28 E	WM	18	NW SE

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q - Q	ACRES
3 N	28 E	WM	18	SW NE	20.0
3 N	28 E	WM	18	NW SE	25.0

12. Transfer Application T-7533 proposes to change the point of diversion approximately 1½ miles downstream on Butter Creek to a point located:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
3 N	28E	WM	8.	NE SW	2500 FEET NORTH AND 1320 FEET EAST FROM THE SW CORNER OF SECTION 8.

13. Notice of the application for transfer was published on April 2, 1996, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
14. No evidence was submitted with the application to establish that the water had been used over the five years prior to filing the transfer application according to the terms and conditions of the rights, or that the rights are not subject to forfeiture under ORS 540.610.
15. No information was submitted with the transfer application to establish that a water delivery system, sufficient to use the full amount of water allowed under the existing right was present pursuant to OAR 690-15-060(10), being the administrative rule in effect at the time the transfer application was filed, or OAR 690-380-3000(12) being the administrative rules currently in effect.
16. The Department’s initial review and field research revealed that most of the proposed place of use (“TO” lands) are receiving water, but under several other Simplot Company and Westland Irrigation District rights. It appears that Westland Irrigation District’s re-mapping project under HB 3111 in the mid-1990’s covered a large portion of the “TO” lands proposed in this transfer. In addition, subsequent certificates have been issued, cancelling two of the water rights proposed in T-7533, one of which was diminished to supplemental irrigation for the incoming 1903 Westland Irrigation District right.
17. As identified in Findings of Fact #14 and #15 above, the application is deficient. Additionally, Certificates 2682 and 2691 have been cancelled and superseded by rights that have been significantly modified. As a result, the application cannot be processed as submitted.
18. On August 26, 2005, the Department sent the applicant a letter addressing the issues surrounding the transfer application and the delay in processing. The letter indicated that

Westland Irrigation District's HB 3111 re-mapping project resolved most, if not all, of the requests proposed in Transfer Application T-7533. It appears the application may no longer be needed. The Department requested a written response on whether to continue or withdraw the application by September 26, 2005; otherwise, the Department may issue a preliminary Determination proposing to deny the transfer. No response was received to the letter.

19. On December 20 and 28, 2005, the Department contacted the applicant by letter requesting a response to whether they desired continued processing of this transfer. No response was received to the letters.
20. On December 20, 2006, the Department had still not received a response from the applicant and again sent out a letter requesting a written response or comments on whether to continue processing Transfer Application T-7533.
21. The Department sent several e-mails in late 2006 and early 2007 to the applicant requesting a response as to whether to continue processing T-7533.
22. On June 6, 2007, the Department sent another e-mail to Mr. Vic Conrad, attorney and agent for J.R. Simplot Company requesting a response to the Department's repeated attempts at clarifying whether the application desired continued processing of the transfer application. To date, the Department has not received a written or verbal response to the Department's previous requests.
23. On July 26, 2007, the Department mailed a copy of the *draft* Preliminary Determination proposing to **deny** Transfer Application T-7533 to the applicant. The cover letter that accompanied the *draft* Preliminary Determination set forth a deadline of August 27, 2007, for the applicant to respond with comments. The applicant did not submit any comments by the deadline.
24. On September 17, 2007, the Department issued a Preliminary Determination proposing to **deny** Transfer T-7533 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on September 25, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
25. The record does not contain sufficient information to determine whether the proposed change would result in enlargement of the rights.
26. The Department is UNABLE to make an affirmative finding that the proposed change would not result in injury to other water rights.
27. As identified in Findings of Fact #14 and #15 above, the transfer application does not meet standards for completeness as per ORS 540.520 and OAR Chapter 690, Division 15 which were in effect at the time of filing, nor does it meet OAR Chapter 690, Division 380 completeness standards currently in effect.

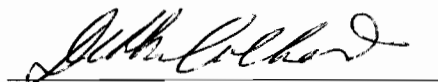
Conclusions of Law

Transfer application T-7533 does not meet the requirements of ORS Chapter 540, OAR 690-15-060 or OAR 690-380-3000 for completeness, and cannot be processed. The changes in place of use and points of diversion proposed in Transfer Application T-7533 are **NOT** consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now therefore it is ORDERED:

Transfer Application T-7533, in the name of J.R. Simplot Company is **denied**.

Dated at Salem, Oregon this 29th day of October 2007.



Phillip C. Ward, Director

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Mailing Date: **OCT 31 2007**