

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

In the Matter of Transfer Application) FINAL ORDER
T-9008, Union County, Oregon) APPROVING A CHANGE IN PLACES
) OF USE, A CHANGE IN POINTS OF
) DIVERSION, PARTIAL
) CANCELLATION OF A WATER
) RIGHT, AND PARTIAL DIMINUTION
) OF WATER RIGHTS.

Authority

ORS 540.505 to 540.580 and ORS 537.348 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. 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

Neil Cooper
John and Verla Gregory
205 Main Street
La Grande, OR 97850

Findings of Fact

Background

1. On January 16, 2002, Neil Cooper and John and Verla Gregory filed an application to transfer the place of use and the character of use under Certificates 79871, 79872, 79873, and 79875, to instream use. The Department assigned the application number T-9008.
2. The transfer application proposed to change the character of use of the rights to instream use. However, on October 17, 2007, the applicant modified the application to change the place of use and point of diversion of the rights to irrigate lands in the Alicel Irrigation District.

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.

3. On October 9, 2008, the applicant provided a map showing the lands and associated points for diversion to which the water rights would be transferred under Transfer Application T-9008. Certificate 79201 has been superseded by Certificate 82074. Certificate 79203 has been superseded by Certificate 79875.
4. The map provided by the applicant identifies lands from which the water rights are to be moved on which there are not water rights available under the rights involved in the transfer. As a result, the map submitted on October 9, identifies 62.3 acres more than may be irrigated under the transfer. The map also mislabels the east-west distance for proposed Point of Diversion No. 6 as being 2730 feet.
5. On November 25, 2008, the applicant's Certified Water Right Examiner, Greg Blackman, Jr., identified the lands shown on the map that would not be irrigated under the proposed transfer and provided the correct location of proposed Point of Diversion No. 6.
6. On April 22, 2009, the applicant withdrew proposed Point of Diversion No. 5. The point of diversion could not receive water from the authorized source, the Grande Ronde River.
7. The portion of the first right to be transferred is as follows:

Certificate: 82074 in the name of Grande Ronde Valley Irrigation Company
Use: Irrigation of 436.0 acres
Priority Date: July 25, 1911
Quantity: 5.45 cubic feet per second (cfs), if available at the original point of diversion described as being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 32, T 2 S, R 38 E, W.M.
Source: Grande Ronde River, tributary to the Snake River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	Q-Q		Measured Distances
2	S	38	E	W.M.	32	SW	SE	640 feet North and 190 feet East from the S $\frac{1}{4}$ Corner of Sec. 32

Authorized Place of Use:

IRRIGATION								
Township		Range		Meridian	Sec	Q-Q		Acres
3	S	38	E	W.M.	13	NE	SW	40.0
3	S	38	E	W.M.	13	NW	SW	39.1
3	S	38	E	W.M.	13	SW	SW	38.2
3	S	38	E	W.M.	13	SE	SW	39.1
3	S	38	E	W.M.	13	NW	SE	20.0
3	S	38	E	W.M.	13	SW	SE	19.1
3	S	38	E	W.M.	14	NE	SW	5.9
3	S	38	E	W.M.	14	SW	SW	39.1
3	S	38	E	W.M.	14	SE	SW	39.1
3	S	38	E	W.M.	14	NE	SE	39.1

IRRIGATION							
Township		Range		Meridian	Sec	Q-Q	Acres
3	S	38	E	W.M.	14	NW SE	40.0
3	S	38	E	W.M.	14	SW SE	39.1
3	S	38	E	W.M.	14	SE SE	38.2
Total							436.0

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

Certificate: 79872 in the name of Grande Ronde Valley Irrigation Company

Use: Irrigation of 31.5 acres

Priority Date: July 25, 1911

Quantity: 0.39 cubic foot per second (cfs), if available at the original point of diversion described as being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 32, T 2 S, R 38 E, W.M.

Source: Grande Ronde River, tributary to the Snake River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	Q-Q	Measured Distances
2	S	38	E	W.M.	32	SW SE	640 feet North and 190 feet East from the S $\frac{1}{4}$ Corner of Sec. 32

Authorized Place of Use:

IRRIGATION							
Township		Range		Meridian	Sec	Q-Q	Acres
3	S	38	E	W.M.	13	SW SE	17.0
3	S	38	E	W.M.	13	SE SE	14.5
Total							31.5

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

Certificate: 79873 in the name of Grande Ronde Valley Irrigation Company

Use: Irrigation of 18.8 acres

Priority Date: July 25, 1911

Quantity: 0.23 cubic foot per second (cfs), if available at the original point of diversion described as being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 32, T 2 S, R 38 E, W.M.

Source: Grande Ronde River, tributary to the Snake River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	Q-Q	Measured Distances
2	S	38	E	W.M.	32	SW SE	640 feet North and 190 feet East from the S $\frac{1}{4}$ Corner of Sec. 32

Authorized Place of Use:

IRRIGATION							
Township		Range		Meridian	Sec	Q-Q	Acres
3	S	38	E	W.M.	13	SE SE	18.8

10. The fourth right to be transferred is as follows:

Certificate: 79875 in the name of R.D. Mac Inc.

Use: Irrigation of 74.1 acres

Priority Date: June 1865

Rate/Duty: One-fortieth of one cubic foot per second per acre, not to exceed 3.0 acre-feet per acre, if available at the original points of diversion described as Caviness and May Water Ditches (SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 32, T 2 S, R 38 E, W.M., 475 feet North and 660 feet East from the S $\frac{1}{4}$ Corner of Sec. 32; and SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 32, T 2 S, R 38 E, W.M., 55 feet South and 1654 feet East from the S $\frac{1}{4}$ Corner of Sec. 32.

Source: Grande Ronde River, tributary to the Snake River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	Q-Q		Measured Distances
2	S	38	E	W.M.	32	SW	SE	640 feet North and 190 feet East from the S $\frac{1}{4}$ Corner of Sec. 32

Authorized Place of Use:

IRRIGATION								
Township		Range		Meridian	Sec	Q-Q		Acres
3	S	38	E	W.M.	14	NE	SW	34.1
3	S	38	E	W.M.	14	NW	SW	40.0
Total								74.1

11. Transfer Application T-9008 proposes to change the point of diversion of a portion of the rights (483.8 acres) described in Findings of Fact Nos. 6, 7 and 8 (Certificates 82074, 79872 and 79873) to:

Township		Range		Meridian	Sec	Q-Q		Measured Distances
1	S	39	E	W.M.	33	SE	SW	POD No. 1 - 600 feet North and 2890 feet West of the SE corner of Sec. 33
1	S	39	E	W.M.	33	NE	SE	POD No. 2 - 1470 feet North and 950 feet West of the SE corner of Sec. 33
2	S	39	E	W.M.	4	NE	SE	POD No. 3 - 2850 feet South and 550 feet West of the NE corner of Sec. 4
2	S	39	E	W.M.	4	NW	SE	POD No. 4 - 1320 feet North and 3125 feet East of the SW corner of Sec. 4

12. Transfer Application T-9008 proposes to change the place of use of a portion of the rights (119.5 acres) described in Findings of Fact Nos. 6, 7 and 8 (Certificates 82074, 79872 and 79873) to:

IRRIGATION							
Township		Range		Meridian	Sec	Q-Q	Acres
1	S	39	E	W.M.	32	SW SE	35.9
1	S	39	E	W.M.	33	SE SW	4.5
1	S	39	E	W.M.	33	NE SE	5.7
1	S	39	E	W.M.	33	NW SE	11.5
1	S	39	E	W.M.	33	SW SE	24.9
1	S	39	E	W.M.	33	SE SE	14.7
2	S	39	E	W.M.	4	NW SE	6.3
2	S	39	E	W.M.	4	SW SE	16.0
Total							119.5

13. Transfer Application T-9008 proposes to diminish a portion of the rights (224.7 acres) described in Findings of Fact Nos. 6, 7 and 8 (Certificates 82074, 79872 and 79873) to be supplemental to the water rights evidenced by Certificate 41063 and to change the place of use to:

SUPPLEMENTAL IRRIGATION							
Township		Range		Meridian	Sec	Q-Q	Acres
1	S	39	E	W.M.	32	SE SE	40.0
2	S	39	E	W.M.	4	NW SW	34.9
2	S	39	E	W.M.	5	NE NE	36.8
2	S	39	E	W.M.	5	SW NE	39.6
2	S	39	E	W.M.	5	SE NW	40.0
2	S	39	E	W.M.	5	NE SE	33.4
Total							224.7

14. Transfer Application T-9008 proposes to diminish a portion of the rights (77.3 acres) described in Findings of Fact Nos. 6, 7 and 8 (Certificates 82074, 79872 and 79873) to be supplemental to the water rights evidenced by Certificate 41162 and to change the place of use to:

SUPPLEMENTAL IRRIGATION							
Township		Range		Meridian	Sec	Q-Q	Acres
2	S	39	E	W.M.	4	SW SW	32.2
2	S	39	E	W.M.	5	SE SE	40.0
2	S	39	E	W.M.	8	NE NE	2.5
2	S	39	E	W.M.	9	NW NW	2.6
Total							77.3

15. Transfer Application T-9008 proposes to change the point of diversion of a portion of the rights (64.8 acres) described in Findings of Fact Nos. 6, 7 and 8 (Certificates 82074, 79872 and 79873) to:

Township		Range		Meridian	Sec	Q-Q		Measured Distances
2	S	39	E	W.M.	10	NW	NW	POD No. 6 - 924 feet South and 5034 feet West of the NE corner of Sec. 10

16. Transfer Application T-9008 proposes to change the place of use of a portion of the rights (64.8 acres) described in Findings of Fact No. 6, 7 and 8 (Certificates 82074, 79872 and 79873) to:

IRRIGATION								
Township		Range		Meridian	Sec	Q Q		Acres
2	S	39	E	W.M.	3	SW	SW	2.0
2	S	39	E	W.M.	3	SE	SW	11.4
2	S	39	E	W.M.	3	NW	SE	14.0
2	S	39	E	W.M.	10	NE	NW	16.6
2	S	39	E	W.M.	10	NW	NW	20.8
Total								64.8

17. Primary irrigation water rights are appurtenant to the lands described in Finding of Fact No. 15 under Certificates 41159 and 46739. Transfer Application T-10540 proposes to change the place of use the rights to another location.

18. Transfer Application T-9008 proposes to change the point of diversion of the rights described in Finding of Fact No. 9 (Certificate 79875) to:

Township		Range		Meridian	Sec	Q-Q		Measured Distances
1	S	39	E	W.M.	33	SE	SW	POD No. 1 - 600 feet North and 2890 feet West of the SE corner, Sec. 33
1	S	39	E	W.M.	33	NE	SE	POD No. 2 - 1470 feet North and 950 feet West of the SE corner, Sec. 33
2	S	39	E	W.M.	4	NE	SE	POD No. 3 - 2850 feet South and 550 feet West of the NE corner, Sec. 4
2	S	39	E	W.M.	4	NW	SE	POD No. 4 - 1320 feet North and 3125 feet East of the SW corner, Sec. 4

19. Transfer Application T-9008 proposes to diminish the water rights described in Finding of Fact No. 9 (Certificate 79875) to be supplemental to the water rights evidenced by Certificate 41162 and change the place of use of the rights to:

SUPPLEMENTAL IRRIGATION								
Township		Range		Meridian	Sec	Q-Q		Acres
2	S	39	E	W.M.	8	NE	NE	37.1
2	S	39	E	W.M.	9	NW	NW	37.0
Total								74.1

20. Permit G-13820 is appurtenant to the lands from which the rights are being transferred under Transfer Application T-9008. The permit was issued as a primary water right to replace the water rights being transferred off the “from” lands and is not involved in the transfer. Under the terms of the permit, the permittee will be able to submit a claim of beneficial use for the permit as a primary right once the transfer application is approved.
21. Notice of the application for transfer was published on February 4, 2002, pursuant to OAR 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
22. On November 21, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9008 to the applicants. The draft Preliminary Determination set forth a deadline of December 22, 2008, 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.
23. On December 30, 2008, the Department issued a preliminary determination proposing to approve Transfer T-9008 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 January 6, 2009, and in The Observer newspaper on January 28, February 4 and 11, 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)]

24. Evidence has been submitted that water has been used within the last five years according to the terms and conditions of the rights. Confirming certificates were issued for the rights affected by the transfer within five years of the date on which Transfer Application T-9008 was filed and, therefore, a five-year period of non-use could not have occurred under the certificates.
25. The experience of the watermaster gained through regulation and distribution of water on the Grande Ronde River has demonstrated that there are significant, but un-quantified channel losses below the authorized diversion. Protection and delivery of the full quantity of water proposed for irrigation use downstream of the authorized diversion would reduce the availability of water for existing water rights.
26. The applicants have submitted written agreement to the inclusion in the transfer of the condition proposed by the Department to subordinate the use of 50 percent of the quantity of water legally available to the transferred water rights to those existing water rights with authorized points of diversion located between the location of the point of diversion currently authorized under Certificates 82074, 79872, 79873, and 79875, and the confluence with the Wallowa River near Rondowa.
27. The proposed changes, if conditioned as described in Finding of Fact No. 26 above, would not result in injury to other water rights.

Partial Cancellation of a Water Right

28. On January 16, 2002, the applicant for Transfer Application T-9008, submitted an affidavit authorizing the partial cancellation of a portion of Certificate 29152 as follows:

Certificate: 29152, in the name of Grande Ronde Valley Irrigation Co.
Use: Supplemental irrigation of 507.8 acres
Priority Date: November 24, 1953
Quantity 5.07 cubic feet per second (cfs)
Source: Gekeler Slough (sometimes called Mill Creek), tributary to the Grande Ronde River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	Q-Q	Measured Distances
3	S	38	E	W.M.	15	SW NW	Not specified

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION							
Township		Range		Meridian	Sec	Q-Q	Acres
3	S	38	E	W.M.	13	NE SW	39.6
3	S	38	E	W.M.	13	NW SW	38.6
3	S	38	E	W.M.	13	SW SW	37.0
3	S	38	E	W.M.	13	SE SW	38.6
3	S	38	E	W.M.	13	NW SE	20.0
3	S	38	E	W.M.	13	SW SE	20.0
3	S	38	E	W.M.	14	NE SW	40.0
3	S	38	E	W.M.	14	NW SW	40.0
3	S	38	E	W.M.	14	SW SW	39.0
3	S	38	E	W.M.	14	SE SW	39.0
3	S	38	E	W.M.	14	NE SE	39.0
3	S	38	E	W.M.	14	NW SE	40.0
3	S	38	E	W.M.	14	SW SE	39.0
3	S	38	E	W.M.	14	SE SE	38.0
Total							507.8

Conclusions of Law

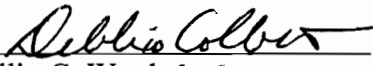
The proposed change in places of use and points of diversion in Transfer Application T-9008 is consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000. The abandoned portion of Certificate 29152 is cancelled and the portions of Certificates 82074, 79872, 79873, and 79875, are diminished to supplemental irrigation.

Now, therefore, it is ORDERED:

1. The proposed changes shall be effective upon issuance of a final order.
2. The right to the use of the water under Transfer Application T-9008 is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in Certificates 82074, 79872, 79873, and 79875, and any related decree. The right to the use of the water under T-9008 shall be further limited as described in Finding of Fact No. 26.
3. Certificates 82074, 79872, 79873, 79875, and 29152 are cancelled. Remaining right certificates shall be issued for the portion of the certificates not affected by this transfer and cancellation.
4. Water shall be acquired from the same surface water source as the original point of diversion.
5. The former places of use shall no longer be irrigated under the water rights involved in the transfer.
6. Prior to diverting water at the proposed points of diversion, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
7. If Transfer Application T-10540 is not approved, the water rights transferred under T-9008 shall be supplemental to the rights evidenced by Certificates 41159 and 46739.
8. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2010. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the responsible party for Transfer Application T-9008 within one year after the deadline for completion of the changes and full beneficial use of the water.
9. Alicel Irrigation District, 65101 Imbler Road, Cove, OR 97824 is responsible for completion of the changes under Transfer Application T-9008.

10. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 24th day of April, 2009.



Phillip C. Ward *pcw*
Director

Mailing date: APR 29 2009