

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

In the Matter of Transfer Application)
T-10940, Grant County)
)
)
)
)

FINAL ORDER APPROVING A
CHANGE IN POINT OF DIVERSION
FOR TWO WATER RIGHTS AND AN
ADDITIONAL POINT OF DIVERSION
FOR THREE RIGHTS

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.

Applicants

JAMES D. & DEBRA A. GILLESPIE
P.O. BOX 329
28868 SOUTH FORK RD
DAYVILLE, OR 97825

Agent

KYLE SULLIVAN
GRANT SOIL & WATER CONSERVATION DISTRICT
721 SOUTH CANYON BLVD.
JOHN DAY, OR 97845

Findings of Fact

Background

1. On July 31, 2009, Jim Gillespie filed an application to add an additional point of diversion under Certificates 9154, 9155, 25488, 25490 and 25497. The Department assigned the application number T-10940.
2. On February 19, 2013, the applicant’s agent submitted revised pages, modifying the change for Certificates 9154 and 9155 to a change in point of diversion, rather than an additional point of diversion. A revised map was submitted March 11, 2013, reflecting these changes.
3. The FIRST right to be transferred is as follows:

Certificate: 9154 in the name of G. E. B. CAMPBELL – MARTIN (confirmed by John Day River (F))

Use: IRRIGATION of 20.0 ACRES

Priority Date: February 17, 1930

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.

Quantity: 0.25 CUBIC FOOT PER SECOND (cfs)

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 in case of rotation

Source: SOUTH FORK JOHN DAY RIVER, tributary to the JOHN DAY RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	26 E	WM	12	SE NE	5.0
13 S	26 E	WM	12	NE SE	15.0

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Diversion
13 S	26 E	WM	24	NW NE	CUMMINGS DITCH

- Transfer application T-10940 proposes to change the point of diversion downstream approximately 3.4 miles to a diversion located:

Proposed Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
13 S	26 E	WM	12	SE SE	940 FEET NORTH AND 40 FEET WEST FROM THE SE CORNER OF SECTION 12

- The SECOND right to be transferred is as follows:

Certificate: 9155 in the name of LESLIE C. MARTIN (confirmed by John Day River (F))

Use: IRRIGATION of 7.0 ACRES

Priority Date: February 17, 1930

Quantity: 0.09 CUBIC FOOT PER SECOND (cfs)

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 in case of rotation

Source: SOUTH FORK JOHN DAY RIVER, tributary to the JOHN DAY RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	27 E	WM	7	SW NW	2.0
13 S	27 E	WM	7	NW SW	5.0

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Diversion
13 S	26 E	WM	24	NW NE	CUMMINGS DITCH

6. Transfer application T-10940 proposes to change the point of diversion downstream approximately 3.4 miles to a diversion located:

Proposed Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
13 S	26 E	WM	12	SE SE	940 FEET NORTH AND 40 FEET WEST FROM THE SE CORNER OF SECTION 12

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

Certificate: 25488 in the name of GAYNOR E. B. CAMPBELL – MARTIN (confirmed by John Day River (F))

Use: IRRIGATION of 38.0 ACRES

Priority Date: 1878

Limit/Duty: The amount of water to which such right is entitled, for the purpose of irrigation, is limited to an amount actually beneficially used for said purpose, and shall not exceed ONE-FORTIETH of one cubic foot per second per acre irrigated to June 1st, and ONE-EIGHTIETH of one cubic foot per second per acre thereafter; further limited to ONE ACRE-FOOT per calendar month to June 1st, and FOUR ACRE FEET per acre during the irrigation season from April 1 to September 30, measured at the point of diversion

Source: SOUTH FORK JOHN DAY RIVER, tributary to the JOHN DAY RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	26 E	WM	12	SE NE	13.8
13 S	26 E	WM	12	NE SE	18.0
13 S	26 E	WM	12	SE SE	6.2

8. Certificate 25488 does not describe the location of the point of diversion, however information is available from the John Day River Decree and associated adjudication map indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q - Q	Diversion
13 S	27 E	WM	7	SW SW	RILEY DITCH

9. Transfer application T-10939 proposes to add an additional point of diversion downstream approximately 150 feet to a diversion located:

Proposed Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
13 S	26 E	WM	12	SE SE	940 FEET NORTH AND 40 FEET WEST FROM THE SE CORNER OF SECTION 12

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

Certificate: 25490 in the name of GAYNOR E. B. CAMPBELL – MARTIN (confirmed by John Day River Decree (F))

Use: IRRIGATION of 8.0 ACRES

Priority Date: SEPTEMBER 29, 1902

Limit/Duty: The amount of water to which such right is entitled, for the purpose of irrigation, is limited to an amount actually beneficially used for said purpose, and shall not exceed ONE-FORTIETH of one cubic foot per second per acre irrigated to June 1st, and ONE-EIGHTIETH of one cubic foot per second per acre thereafter; further limited to ONE-ACRE FOOT per calendar month to June 1st, and FOUR ACRE FEET per acre during the irrigation season from April 1 to September 30, measured at the point of diversion
Source: SOUTH FORK JOHN DAY RIVER, tributary to the JOHN DAY RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	26 E	WM	12	SE SE	8.0

11. Certificate 25490 does not describe the location of the point of diversion, however information is available from the John Day River Decree and associated adjudication map indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q - Q	Diversion
13 S	27 E	WM	7	SE SW	CAMPBELL-MARTIN DITCH

12. Transfer Application T-10940 proposes to add an additional point of diversion downstream approximately 2100 feet to a diversion located:

Proposed Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
13 S	26 E	WM	12	SE SE	940 FEET NORTH AND 40 FEET WEST FROM THE SE CORNER OF SECTION 12

13. The FIFTH right to be transferred is as follows:

Certificate: 25497 in the name of LESLIE C. MARTIN (confirmed by John Day River (F))

Use: IRRIGATION of 11.5 ACRES

Priority Date: SEPTEMBER 29, 1902

Limit/Duty: The amount of water to which such right is entitled, for the purpose of irrigation, is limited to an amount actually beneficially used for said purpose, and shall not exceed ONE-FORTIETH of one cubic foot per second per acre irrigated to June 1st, and ONE-EIGHTIETH of one cubic foot per second per acre thereafter; further limited to ONE-ACRE FOOT per acre per calendar month to June 1st, and FOUR-ACRE FEET per acre during the irrigation season from April 1 to September 30, measured at the point of diversion

Source: SOUTH FORK JOHN DAY RIVER, tributary to the JOHN DAY RIVER

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	G.Lot	Acres
13 S	27 E	WM	7	SW SW	Lot 4	10.6
13 S	27 E	WM	7	SE SW	--	0.9

14. Certificate 25497 does not describe the location of the point of diversion, however information is available from the John Day River Decree and associated adjudication map indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q - Q	Diversion
13 S	27 E	WM	7	SE SW	CAMPBELL-MARTIN DITCH

15. Transfer Application T-10940 proposes to add an additional point of diversion downstream approximately 2100 feet to a diversion located:

Proposed Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
13 S	26 E	WM	12	SE SE	940 FEET NORTH AND 40 FEET WEST FROM THE SE CORNER OF SECTION 12

16. Notice of the application for transfer was published on August 18, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
17. 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. This diversion may be eligible for screening cost-share funds.
18. Accompanying the transfer application was a letter from Gary Wilson, Engineer for the Grant Soil and Water Conservation District (GSWCD), stating that this transfer is one of three transfers being proposed as part of a complete project on the South Fork of the John Day River to improve irrigation efficiency, fish passage and habitat for listed steelhead and spring Chinook salmon. These projects would result in the elimination of three gravel push-up dams and would convert a fourth to a lay-flat stanchion structure, all allowing for the conversion of 115 acres from flood irrigation to sprinkler along a 5.5 mile reach of the river.
19. ODFW stated that because the transfer was submitted along with two other transfers as described in the tables below, the merits and impacts of the project may create an overall net benefit to the resource (fish) and wildlife habitat. The ODFW also stated that they would look forward to a more thorough review once the transfers proceed. Transfer application T-10938 (Lee Schrier) and T-10939 (Stan Harlan) are being processed simultaneously with this transfer. The following table was submitted by the Grant Soil and Water Conservation District and may be used to evaluate the "package" as a whole in terms of the three associated transfer files being proposed on the South Fork John Day River. The table represents the movement of a specific amount of cubic foot per second per each segment of the river described.

CFS Flow Increase / (Decrease)		Distances (moving downstream from Cummings River Ditch)													
		From:		Cummings Ditch		Miller Ditch		Campbell Martin Ditch		Riley Ditch		Gillespie Pump Station		Dayville Ditch	
		To:		Miller Ditch		Campbell Martin Ditch		Riley Ditch		Gillespie Pump Station		Dayville Ditch		Harlan Pump Station	
Distance:		0.53 mile		2.3 mile		0.37 mile		0.03 mile		0.67 mile		0.5 mile			
Split Season Rate / Before & After June 1 st		1/40 th	1/80 th	1/40 th	1/80 th	1/40 th	1/80 th	1/40 th	1/80 th	1/40 th	1/80 th	1/40 th	1/80 th	1/40 th	1/80 th
Schrier Transfer (T-10938)	Move Water Right Cert#12096 upstream to fish friendly permanent lay-flat diversion structure to eliminate need for gravel push-up diversion	-0.035	-0.017												
Gillespie Transfer (T-10940)	Move part of Water Right 25488 & 25495 Downstream to Pump Station							1.27	0.64						
	Move part of Water Right 9154 & 9155 Downstream to Pump Station	0.68	0.34	0.68	0.34	0.68	0.34	0.68	0.34						
	Move Water Right 25490 & 25497 Downstream to Pump Station					0.49	0.24	0.49	0.24						
Harlan Transfer (T-10940)	Move part of Water Right 25488 & 25495 Downstream to Pump Station							0.32	0.16	0.32	0.16	0.32	0.16		
	Move Water Right 25496 Downstream to Pump Station													0.44	0.22
Net Instream Benefit (cfs)*		0.645	0.323	0.68	0.34	1.17	0.58	2.76	1.38	0.32	0.16	0.76	0.38		

20. The applicant and the Watermaster have reported that in the summer of 2005, a fish-friendly, lay-flat stanchion design was installed at the Cummings Ditch diversion.
21. On November 28, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10940 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 28, 2011 for the applicant to respond. On January 12, 2012, the agent, on behalf of the applicant, submitted a written response requesting the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
22. On October 16, 2012, Lee Schrier, applicant for the associated (upstream) transfer application T-10938 submitted a request to withdraw a portion of the place of use involved in the transfer and submitted a revised application and map to reflect the modification. The adjustment made to the place of use also necessitated modification to the amount of water associated with the new acreage amount. The table in Finding of Fact #19 above has been adjusted accordingly to reflect these changes to transfer application T-10938.

23. On December 4, 2012, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10940 and sent 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 11, 2012, and in the Blue Mountain Eagle newspaper on December 12, 19 and 26, 2012, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
24. On February 19, 2013, the application was modified from an additional point of diversion to a change in point of diversion for Certificates 9154 and 9155, as reflected in this order.

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

25. Water has been used within the last five years prior to submittal of the transfer application 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.
26. 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-10940.
27. The proposed change would not result in enlargement of the rights.
28. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in point of diversion and additional point of diversion proposed in Transfer Application T-10940 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

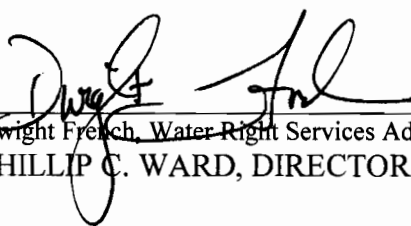
Now, therefore, it is ORDERED:

1. The change in point of diversion and additional point of diversion proposed in application T-10940 are approved, concurrently with orders approving T-10938 and T-10939.
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 and any related decree.
3. Water right Certificates 9154, 9155, 25488, 25490 and 25497 are cancelled. A new certificate will be issued to describe the portion of Certificate 25488 not affected by this transfer.
4. The quantity of water diverted at the new 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 may begin** under this order, the water user shall install a totalizing flow meter, with prior approval of the Director, another suitable measuring device (such as a weir, flume, or submerged orifice), at the 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. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the 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 operate and maintain 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.
7. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2014**. 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.
8. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 8 day of May, 2013.


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

Mailing date: May 17, 2013