

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

In the Matter of Transfer Applications)	FINAL ORDER APPROVING A
T-9131 and T-9132)	CHANGE IN PLACE OF USE AND
Union County, Oregon)	POINT OF DIVERSION AND PARTIAL
)	CANCELLATION OF CERTIFICATES
)	79200 AND 80889

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.

T-9131 - Applicant
Kenneth & Grace Torkelson
63578 Gekeler Lane
LaGrande, OR 97850

Receiving Landowner
Alicel Irrigation District
65101 Imbler Road
Cove, OR 97824

T-9132 - Applicant
Nancy V. Rayburn
Agent: Sherilyn F. Rayburn
59099 Pierce Rd.
LaGrande, OR 97850

Receiving Landowner
Alicel Irrigation District
65101 Imbler Road
Cove, OR 97824

Findings of Fact

1. Kenneth & Grace Torkelson filed an application to transfer the point of diversion and place of use under Certificates 79200 and 79874. The Department assigned the application number T-9131.
2. Nancy V. Rayburn (Sherilyn F. Rayburn, Agent) filed an application to transfer the point of diversion and place of use under Certificate 79871. Certificate 79871 has since been superseded by Certificate 80889. The Department assigned the application number T-9132.
3. The portion of the first right to be transferred under T-9131 is as follows:

This is a final order in other than 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.

Certificate: 79200 in the name of Grande Ronde Valley Improvement Ditch Company
Use: Irrigation of 124.56 acres
Priority Date: January 23, 1958
Quantity: 2.0 cfs, if available at the original point of diversion described as being within the SW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 32, T2S, R38E, W.M.
Rate/Duty: 1/40 cfs per acre, not to exceed 3.0 acre-feet per acre
Source: Grande Ronde River, tributary to Snake River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	$\frac{1}{4}$ $\frac{1}{4}$	Location
2	S	38	E	W.M.	32	SW SE	640 feet North & 190 feet East from the S $\frac{1}{4}$ corner, Sec. 32

Authorized Place of Use:

Township	Range	Meridian	Sec	$\frac{1}{4}$ $\frac{1}{4}$	Acres
3	S	38	E	W.M.	14 NE NW 35.68
3	S	38	E	W.M.	14 NW NW 11.48
3	S	38	E	W.M.	14 SW NW 39.40
3	S	38	E	W.M.	14 SE NW 38.00

4. The portion of the right to be transferred under T-9132 is as follows:

Certificate: 80889 in the name of Grande Ronde Valley Irrigation Company
Use: Irrigation of 74.7 acres
Priority Date: July 25, 1911
Quantity: 0.93 cfs, if available at the original point of diversion described as being within the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 32, T2S, R38E, W.M.
Source: Grande Ronde River, tributary to Snake River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	$\frac{1}{4}$ $\frac{1}{4}$	Location
2	S	38	E	W.M.	32	SW SE	640 feet North & 190 feet East from the S $\frac{1}{4}$ corner, Sec. 32

Authorized Place of Use:

Township	Range	Meridian	Sec	$\frac{1}{4}$ $\frac{1}{4}$	Acres
3	S	39	E	W.M.	19 NE NW 38.2
3	S	39	E	W.M.	19 NW NW 36.5

5. The portion of the second right to be transferred under T-9131 is as follows:

Certificate: 79874 in the name of Grande Ronde Valley Irrigation Company
Use: Irrigation of 20.0 acres
Priority Date: July 25, 1911
Quantity: 0.25 cfs
Source: Grande Ronde River, tributary to Snake River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Location
2	S	38	E	W.M.	32	SW SW	Not specified

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
3	S	38	E	W.M.	23	SW NW	20.0

6. The lands to be transferred are incorrectly described in Certificate 79874 as being in the SW¼ NW¼ of Section 23. Certificate 79874 is a remaining right certificate that superseded Certificate 3323. The incorrect description is as a result of a scrivener’s error in preparation of Certificate 79874. The lands to be transferred are correctly described as being in the SE¼ NW¼ of Section 23.

7. Applications T-9131 and T-9132 propose to move the authorized point of diversion approximately 13.5 miles downstream in the Grande Ronde River to:

Township		Range		Meridian	Sec	¼ ¼	Location
2	S	39	E	W.M.	4	NE SE	2450 feet North & 4750 feet East from SW corner Sec. 4

8. Application T-9131 also proposed to establish an authorized point of diversion on an unnamed slough in the NW¼ SE¼, Sec. 4, T2S, R39E, W.M. However, the diversion at that location serves as a point at which water diverted from the Grande Ronde River is re-diverted and pressured for application to the lands. On February 23, 2006, the applicants modified the transfer to omit this as an authorized point of diversion for the water rights to be transferred.

9. Application T-9131 proposes to change the place of use of the right described in Finding of Fact #3 (Certificate 79200) to:

Township		Range		Meridian	Sec	¼ ¼	Acres
2	S	39	E	W.M.	4	NE NE	6.96
2	S	39	E	W.M.	4	NW NE	3.00
2	S	39	E	W.M.	5	SW SW	38.20
2	S	39	E	W.M.	8	NW NW	38.20
2	S	39	E	W.M.	8	SW NW	38.20

10. Application T-9132 proposes to change the place of use of the right described in Finding of Fact #4 (Certificate 80889) to:

Township		Range		Meridian	Sec	¼ ¼	Acres
2	S	39	E	W.M.	5	NE SW	37.9
2	S	39	E	W.M.	5	NW SE	36.8

11. Application T-9131 proposes to change the place of use of the right described in Finding of Fact #5 (Certificate 79874) to:

Township		Range		Meridian	Sec	¼ ¼	Acres
2	S	39	E	W.M.	4	NW NE	2.4
2	S	39	E	W.M.	4	SW NE	17.6

12. Notice of applications for transfer where published pursuant to OAR 540.520 and OAR 690-380-4000. No comments were filed in response to the notices.
13. Certificates were issued for the rights to confirm changes in points of diversion on the following dates:

Certificate	Date of Issuance
79200	February 15, 2002
79871*	January 29, 2003
79874	January 29, 2003

* Certificate 79871 has since been superseded by certificate 80889 which is a remaining right resulting from T-9212.

14. Evidence has been submitted that water has been used within the last five years according to the terms and conditions of the rights. The confirming certificates were issued within the last five years and, therefore, a five-year period of non-use could not have occurred under the certificates.
15. There are currently no instream water rights influenced by the proposed change in point of diversion.
16. 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.
17. The applicants for T-9131 and T-9132 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 diversion currently authorized under certificates 79200, 80889, and 79874 and the confluence with the Wallowa River near Rondowa.
18. The proposed changes, if conditioned as described in Finding of Fact #17 above, would not result in injury to other water rights.
19. The applicant for T-9131 (owner of the lands to which the portion of the water right is appurtenant) has authorized the cancellation of a portion of Certificate 79200 as follows:

Use: Irrigation of 3.06 acres
Priority Date: January 23, 1958
Source: Grande Ronde River, tributary to Snake River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Location
2	S	38	E	W.M.	32	SW SE	640 feet North & 190 feet East from the S ¼ corner, Sec. 32

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
3	S	38	E	W.M.	14	SW NW	0.83
3	S	38	E	W.M.	14	SE NW	2.23

20. The applicant for T-9132 (owner of the lands to which the portion of the water right is appurtenant) has authorized the cancellation of a portion of Certificate 80889 as follows:

Use: Irrigation of 2.6 acres
Priority Date: July 25, 1911
Quantity: 0.03 cfs
Source: Grande Ronde River, tributary to Snake River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Location
2	S	38	E	W.M.	32	SW SE	640 feet North & 190 feet East from the S ¼ corner, Sec. 32

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
3	S	39	E	W.M.	19	NW NW	2.6

21. Notice of the Preliminary Determination was published in the Department’s Weekly Public Notice on April 4, 2006 and in the LaGrande newspaper The Observer on April 6, 13 and 20, 2006. No protests were filed in response to the notice.

Conclusions of Law

The proposed changes in point of diversion and place of use in applications T-9131 and 9132, as conditioned, are consistent with the requirements of 540.505 to 540.580 and OAR 690-380-5000.

Pursuant to ORS 540.621, the portions of developed rights described in Findings of Fact #19 and #20 have been abandoned and should be canceled.

Now, therefore, it is ORDERED:

1. The changes in point of diversion and place of use proposed in applications T-9131 and T-9132 are approved.

2. Water right certificates 79200, 80889, and 79874 are cancelled. Remaining right certificates shall be issued for the portion of the certificates not affected by these transfers and cancellations.
3. The right to the use of the water under T-9131 and T-9132 is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in Certificates 79200, 80889, and 79874, and any related decree. The right to the use of the water under T-9131 and T-9132 shall be further limited as described in Finding of Fact #17.
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 as a part of the portions of those water rights involved in the transfers.
6. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2007. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the responsible party for T-9131 and T-9132 within one year after the deadline for completion of the changes and full beneficial use of the water.
7. Alicel Irrigation District, 65101 Imbler Road, Cove, OR 97824 is responsible for completion of the changes under T-9131 and T-9132.
8. Prior to diverting water under T-9131 and T-9132, 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.
9. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 15th day of June, 2006.



Phillip C. Ward
FOR Director

JUN 13 2006

Mailing date: _____