

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-11420, Union County) CHANGES IN 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

EASTERN OREGON AGRICULTURAL RESEARCH CENTER
OREGON STATE UNIVERSITY
P.O. BOX E (372 S. TENTH STREET)
UNION, OR 97883

Findings of Fact

Background

1. On May 10, 2012, Tim DelCurto, Director of the Eastern Oregon Research Center filed an application to change the place of use under Certificates 6251 and 41056. The Department assigned the application number T-11420.

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

Certificate: 6251 in the name of EASTERN OREGON EXPERIMENT STATION
(confirmed by Grande Ronde River for Union County)

Use: IRRIGATION of 135.8 ACRES

Priority Date: 1867

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second (cfs), or its equivalent for

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.

each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 ACRE-FEET per acre for each acre irrigated during the irrigation season of each year.

Source: CATHERINE CREEK, tributary to the GRANDE RONDE RIVER

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	39 E	WM	23	NE NE	24.0
4 S	39 E	WM	23	SE NE	40.0
4 S	39 E	WM	24	NW NW	31.8
4 S	39 E	WM	24	SW NW	40.0
TOTAL:					135.8

3. Certificate 6251 does not describe the location of the point of diversion for this water use. However information is available from the Grande Ronde River adjudication map and from the current map prepared by the applicant's Certified Water Rights Examiner based on a recent field visit and subsequent survey indicating that the current point of diversion on Catherine Creek is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 S	40 E	WM	18	SW SW	GODLEY DITCH #1

4. Transfer Application T-11420 proposes to change the place of use for the above described right to:

Proposed Place of Use:

Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	39 E	WM	24	NW NE	17.0
4 S	39 E	WM	24	SW NE	40.0
4 S	39 E	WM	24	NE NW	38.3
4 S	39 E	WM	24	SE NW	40.5
TOTAL:					135.8

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

Certificate: 41056 in the name of EASTERN OREGON EXPERIMENT STATION (perfected under Permit S-30419)

Use: IRRIGATION of 135.8 ACRES

Priority Date: MAY 3, 1965

Rate: 2.41 CUBIC FEET PER SECOND

Limit/Duty: limited to an amount actually beneficially used and shall not exceed a diversion of ONE-FORTIETH of one cfs, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 ACRE-FEET per acre for each acre irrigated during the irrigation season of each year.

Source: CATHERINE CREEK, tributary to the GRANDE RONDE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 S	40 E	WM	18	SW SW	40 FEET NORTH AND 1120 FEET EAST FROM THE SW CORNER OF SECTION 18

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	39 E	WM	24	NW NE	17.0
4 S	39 E	WM	24	SW NE	40.0
4 S	39 E	WM	24	NE NW	38.3
4 S	39 E	WM	24	SE NW	40.5
TOTAL:					135.8

6. Transfer Application T-11420 proposes to change the place of use for the above described right to:

Proposed Place of Use:

Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	39 E	WM	23	NE NE	24.0
4 S	39 E	WM	23	SE NE	40.0
4 S	39 E	WM	24	NW NW	31.8
4 S	39 E	WM	24	SW NW	40.0
TOTAL:					135.8

7. Transfer Application T-11420 proposes to change the place of use of two water rights by essentially swapping or “flip-flopping” the two water rights. A portion of the place of use (“FROM” lands) for Certificate 41056 also has a layered supplemental irrigation right under Certificate 64476. The 28.4 acres of supplemental irrigation is located:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	39 E	WM	24	NW NE	12.3
4 S	39 E	WM	24	NE NW	16.1

The transfer proposes to allow the supplemental water right to remain in place and become layered with a portion of the incoming, more senior water right Certificate 6251.

8. Notice of the application for transfer was published on May 15, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. On August 10, 2012, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11420 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 9, 2012, for the applicant to respond. On September 6, 2012, the applicant submitted correspondence by mail requesting the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that they are authorized to pursue the transfer.
10. On September 28, 2012, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11420 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 October 2, 2012, 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)]

11. Water has been used within the five-year period 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.
12. 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-11420.
13. Since the supplemental right described in Finding of Fact #7 will become layered with a primary right that is senior to its original primary right, the supplemental water right will not be enlarged by the change, and will be in compliance with the “similar reliability” process established and authorized under OAR 690-382-0200 (5).
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.

Conclusions of Law

The change in place of use proposed in Transfer Application T-11420 is 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 place of use proposed in application T-11420 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 6215 and 41056 and any related decree.
3. Water right certificates 6251 and 41056 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.
4. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion (new and existing). The water user shall maintain the meters or measuring devices in good working order. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
5. The former places of use of the transferred rights shall no longer receive water under the rights.

6. Full beneficial use of the water shall be made, consistent with the terms of this order, 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 change and full beneficial use of the water.
7. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 6 day of November, 2012.


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

Mailing date: NOV 09 2012