

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q - Q | Survey Coordinates |
|------|------|-----|-----|-------|---|
| 13 S | 29 E | WM | 27 | NW NE | 50 feet south and 3380 feet east from the NW Corner of Section 27 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q - Q | Acres |
| 13 S | 29 E | WM | 18 | SW SE | 4.5 |
| 13 S | 29 E | WM | 18 | SE SE | 2.5 |

3. Certificate 39356 describes the location of the point of diversion in relation to a survey corner in Section 27, of Township 13 South, Range 29 East. The POD is described as within the NW¼ of the NE¼ within Section 27. However, information is available 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 point of diversion is northeast approximately 150 feet from the original POD description, and is located as follows:

| Twp | Rng | Mer | Sec | Q - Q | Survey Coordinates |
|------|------|-----|-----|-------|---|
| 13 S | 29 E | WM | 22 | SW SE | 80 feet north and 3590 feet east from the NW Corner of Section 27 |

4. Transfer Application T-10630 proposes to change the place of use of the above described right to:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q - Q | Acres |
| 13 S | 29 E | WM | 18 | SW SE | 4.3 |
| 13 S | 29 E | WM | 19 | NW NE | 2.7 |

5. Transfer Application T-10630 also proposes to change the point of diversion of the above described right downstream approximately 4 miles to:

| Twp | Rng | Mer | Sec | Q - Q | Survey Coordinates |
|------|------|-----|-----|-------|--|
| 13 S | 29 E | WM | 18 | SW SE | 580 feet north and 1990 feet west from the SE Corner of Section 18 |

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

Certificate: 39357 in the name of KATHERINE GEISLER (John Day River Decree, Grant County)
Use: IRRIGATION OF 8.3 ACRES
Priority Date: 1906
Limit/Duty: ONE-FORTIETH of one cubic foot per second irrigated from April 1 to September 30, further limited to ONE ACRE-FOOT per acre per calendar month to July 1 and 3/4 of ONE ACRE-FOOT per acre thereafter; for a diversion not to exceed FIVE ACRE-FEET per acre for season, measured at the point of diversion
Source: JOHN DAY RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q - Q | Survey Coordinates |
|------|------|-----|-----|-------|---|
| 13 S | 29 E | WM | 27 | NW NE | 50 feet south and 3380 feet east from the NW Corner of Section 27 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q - Q | Acres |
| 13 S | 29 E | WM | 18 | SW SE | 5.0 |
| 13 S | 29 E | WM | 19 | NW NE | 3.3 |

7. Certificate 39357 describes the location of the point of diversion in relation to a survey corner in Section 27, of Township 13 South, Range 29 East. The POD is described as within the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ within Section 27. However, information is available 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 point of diversion is northeast approximately 150 feet from the original POD description, and is located as follows:

| Twp | Rng | Mer | Sec | Q - Q | Survey Coordinates |
|------|------|-----|-----|-------|---|
| 13 S | 29 E | WM | 22 | SW SE | 80 feet north and 3590 feet east from the SW Corner of Section 22 |

8. Transfer Application T-10630 proposes to change the place of use of the above described right to:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q - Q | Acres |
| 13 S | 29 E | WM | 18 | NW SE | 0.1 |
| 13 S | 29 E | WM | 18 | SW SE | 4.7 |
| 13 S | 29 E | WM | 18 | SE SE | 3.5 |

9. Transfer Application T-10630 also proposes to change the point of diversion of the above described right downstream approximately 4 miles to:

| Twp | Rng | Mer | Sec | Q - Q | Survey Coordinates |
|------|------|-----|-----|-------|--|
| 13 S | 29 E | WM | 18 | SW SE | 580 feet north and 1990 feet west from the SE Corner of Section 18 |

10. Notice of Transfer Application T-10630 was published on May 27, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
11. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.
12. On April 30, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10630 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 1, 2010, for the applicant to respond.

The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

13. On June 30, 2010, the Department issued a Preliminary Determination proposing to approve Transfer T-10630 and mailed a copy to the applicants. When signed, the Preliminary Determination was incorrectly dated as July 30, 2010. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on July 6, 2010, and in the Blue Mountain Eagle newspaper on July 14, 21, and 28, 2010, 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)]

14. 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.
15. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
16. 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-10630.
17. The proposed changes would not result in enlargement of the rights.
18. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The changes in POINTS OF DIVERSION and PLACE OF USE proposed in Transfer Application T-10630 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in points of diversion and change in place of use proposed in Transfer Application T-10630 are approved.
2. Water right certificates 39356 and 39357 are cancelled. New certificates will be issued describing those portions of the rights NOT affected by this transfer.
3. 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 39356 and 39357 any related decree.
4. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.

5. Prior to diverting water, the water user shall discontinue the use of the Eddington Ditch for irrigation as it enters TL 1201. The applicant has agreed to stop the flow of the Eddington Ditch with a permanent water control structure to ensure ditch water doesn't continue to irrigate the lands involved in the transfer.
6. 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.
7. When required by the Department, the water user shall install, maintain and operate a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
8. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
9. The former place of use of the transferred rights shall no longer receive water under the rights.
10. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. A Claim of Beneficial Use prepared by a Certified Water Rights 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.
11. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 27 day of August 2010.


Phillip C. Ward, Director

Mailing Date: AUG 31 2010