

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

In the Matter of Transfer Application)
T-7503 Union County)
)
)

FINAL ORDER APPROVING A
CHANGE IN POINTS OF DIVERSION
AND PARTIAL CANCELLATION OF
WATER 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. 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

POWDER VALLEY WATER CONTROL DISTRICT
P.O. BOX 189
NORTH POWDER, OR 97867

Findings of Fact

Background

1. On February 21, 1996, Powder Valley Water Control District, filed a transfer application to change the points of diversion under Certificates 4170, 4171, 4324, 4375, 4587 and 8251. The Department assigned the application number T-7503.
2. On December 12, 2006, the Certified Water Rights Examiner (CWRE) submitted a revised map, correcting discrepancies identified in a conversation between Department staff and the CWRE on September 28, 2006.
3. On April 2, 2007, the CWRE submitted a revised map, identifying lands in the SE¼ SE¼, Section 11, Township 6 South, Range 38 East, W.M.
4. The portion of the first right to be transferred is as follows:
Certificate: 4170 in the name of A. E. GILKISON (confirmed by Powder River decree)

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.

Use: IRRIGATION of 25.5 ACRES
Priority Date: APRIL 1872
Limit/Duty: ONE-FORTIETH cfs per acre
Source: WOLF CREEK, tributary to POWDER RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	38 E	WM	11	SE SE	6.5
6 S	38 E	WM	14	NE NE	19.0

5. Certificate 4170 does not describe the location of the point of diversion, however information is available from the adjudication map indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 S	38 E	WM	11	NE SW	BLEVENS DITCH

6. The portion of the second right to be transferred is as follows:
Certificate: 4171 in the name of G. M. GILKISON (confirmed by Powder River decree)
Use: IRRIGATION of 174.5 ACRES
Priority Date: 1894
Limit/Duty: ONE-FORTIETH cfs per acre
Source: WOLF CREEK, tributary to POWDER RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	38 E	WM	13	SW SE	38.0
6 S	38 E	WM	13	SE SE	36.0
6 S	38 E	WM	24	NW NE	40.0
6 S	39 E	WM	18	SW SW	27.5
6 S	39 E	WM	19	NW NW	32.0

7. Certificate 4171 does not describe the location of the point of diversion, however information is available from the water right map indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 S	38 E	WM	11	NE SW	BLEVENS DITCH

8. The third right to be transferred is as follows:
Certificate: 4324 in the name of I. W. MAHARRY (confirmed by Powder River decree)
Use: IRRIGATION of 525.5 ACRES
Priority Date: 1895 for 40.0 acres and 1897 for 485.5 acres
Limit/Duty: ONE-FORTIETH cfs per acre
Source: WOLF CREEK, tributary to POWDER RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	38 E	WM	24	NE NE	40.0
6 S	38 E	WM	24	SW NE	32.0
6 S	38 E	WM	24	SE NE	40.0
6 S	38 E	WM	24	NE SE	24.0
6 S	39 E	WM	19	NE SW	32.5
6 S	39 E	WM	19	NW SW	36.0
6 S	39 E	WM	19	SW SW	34.0
6 S	39 E	WM	19	SE SW	40.0
6 S	39 E	WM	19	NE SE	1.0
6 S	39 E	WM	19	NW SE	19.0
6 S	39 E	WM	19	SW SE	40.0
6 S	39 E	WM	19	SE SE	37.0
6 S	39 E	WM	30	NE NW	40.0
6 S	39 E	WM	30	NW NW	35.0
6 S	39 E	WM	30	SW NW	35.0
6 S	39 E	WM	30	SE NW	40.0

9. Certificate 4324 does not describe the location of the point of diversion, however information is available from the water right map indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 S	38 E	WM	11	NW NW	MAHARRY DITCH

10. Certificate 4324 describes the authorized place of use as 40.0 acres in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 30, Township 6 South, Range 39 East, Willamette Meridian, Union County, Oregon.

- a. The transfer application depicts the place of use under Certificate 4324 as being 35.0 acres.
- b. Based on the Government Land Office cadastral survey for that location, the land is described as a government lot that is 36.0 acres in size. There is a county road which also runs through the west side of the property. The CWRE calculated the acres irrigated taking in to account the road and concluded that there are 35.0 acres of irrigated land. Therefore, the Department concluded that the land should be re-described as 35.0 acres.
- c. The following table lists the place of use as described in existing certificate 4324 and a proposed re-description based on the above findings:

Certificate	Original Description of Place of Use		Proposed Re-Description of Place of Use		
	$\frac{1}{4}$ - $\frac{1}{4}$	Acres	$\frac{1}{4}$ - $\frac{1}{4}$	Acres	Current Tax Lot (optional)
4324	SW NW	40.0	SW NW	35.0	3300
Township 6 South, Range 39 East, Section 30					

11. The portion of the fourth right to be transferred is as follows:

Certificate: 4375 in the name of NICE BROTHERS (confirmed by Powder River decree)

Use: IRRIGATION of 65.0 ACRES

Priority Date: 1893

Limit/Duty: ONE-FORTIETH cfs per acre

Source: WOLF CREEK, tributary to POWDER RIVER

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Priority Date	Acres
6 S	39 E	WM	17	SW SW	1893	20.0
6 S	39 E	WM	17	SE SW	1893	21.0
6 S	39 E	WM	18	SE SE	1893	24.0

12. Certificate 4375 does not describe the location of the point of diversion, however information is available from the adjudication map indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 S	38 E	WM	11	NE SW	BLEVENS DITCH

13. The portion of the fifth right to be transferred is as follows:

Certificate: 4587 in the name of J. M. YOUNCE (confirmed by Powder River decree)

Use: IRRIGATION of 118.0 ACRES

Priority Date: 1876 for 80.0 acres, 1893 for 19.0 acres and 1895 for 19.0 acres

Limit/Duty: ONE-FORTIETH cfs per acre

Source: WOLF CREEK, tributary to POWDER RIVER

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Priority
6 S	39 E	WM	18	SE SW	19.0	1895
6 S	39 E	WM	18	SE SW	20.0	1876
6 S	39 E	WM	18	NW SE	40.0	1876
6 S	39 E	WM	18	SW SE	20.0	1876
6 S	39 E	WM	18	SW SE	19.0	1893

14. Certificate 4587 does not describe the location of the point of diversion, however information is available from the adjudication map indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 S	38 E	WM	11	NE SW	BLEVENS DITCH
6 S	38 E	WM	11	SE NW	GORHAM DITCH
6 S	38 E	WM	11	SE SE	GILKINSON DITCH

15. The sixth right to be transferred is as follows:

Certificate: 8251 in the name of ALMA E. LUND (perfected under Permit S-8513)

Use: IRRIGATION of 93.0 ACRES

Priority Date: MAY 4, 1928

Rate: 1.21 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre

Source: WOLF CREEK, tributary to NORTH POWDER RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
6 S	38 E	WM	11	NW NW

Authorized Place of Use:

IRRIGATION AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	38 E	WM	13	NW SW	14.0
6 S	38 E	WM	13	SW SW	2.0
6 S	38 E	WM	13	SE SW	37.0
6 S	38 E	WM	24	NE NW	38.0
6 S	38 E	WM	24	NW NW	2.0

16. Supplemental irrigation water rights are additional water rights that make up a deficiency in supply for the principal (primary) irrigation water right. A supplemental irrigation right is not authorized for use on lands for which there is no primary irrigation right. The following table identifies (in bold type) an excess of supplemental irrigation water rights under permit, when compared to the primary irrigation water rights (authorized by water right certificates) for the same lands. Although this transfer application does not involve the supplemental irrigation permits listed in the following table, water users need to be aware that they may be unable to perfect a portion of the supplemental irrigation water permits for lands on which there is not a corresponding, existing primary irrigation water right.

Water Right	Use	Acres
Township 6 S, Range 38 E, Section 13, SE $\frac{1}{4}$ SW $\frac{1}{4}$		
Certificate 8251	Primary Irrigation	37.00
Permit S-42690	Primary Irrigation	2.00
S-35791	Supplemental Irrigation	39.08
Township 6 S, Range 38 E, Section 24, NE $\frac{1}{4}$ NW $\frac{1}{4}$		
Certificate 8251	Primary Irrigation	38.0
Permit S-35791	Supplemental Irrigation	39.08
Permit S-50717	Supplemental Irrigation	39.00
Certificate 65383	Supplemental Irrigation	1.60
Township 6 S, Range 38 E, Section 24, NE $\frac{1}{4}$ SE $\frac{1}{4}$		
Certificate 4324	Primary Irrigation	24.00
Permit S-35791	Supplemental Irrigation	40.0
Permit S-50717	Supplemental Irrigation	40.0

17. Application T-7503 proposes to move the authorized points of diversion from the rights cited in Findings of Fact #4 through #15 approximately 1 mile downstream from the Maharry Ditch, ¼ mile downstream from Gorham Ditch and Blevins Ditch and 1,000 feet upstream from the Gilkison Ditch respectively to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 S	38 E	WM	11	SE SE	MAHARRY BLEVINS; 657 FEET NORTH AND 952 FEET WEST FROM THE SE CORNER OF SECTION 11

18. On December 3, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-7503 to the applicant. The cover letter with the draft Preliminary Determination set forth a deadline of January 2, 2009 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 application.
19. On April 10, 2009, the Department issued a Preliminary Determination proposing to approve Transfer T-7503 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 April 17, 2009, and notice of the application had previously been published in the Baker Record Courier newspaper on June 17, June 24 and July 1, 1999, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
20. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device may be required in the future 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.
21. The department received a statement from the Powder Valley Water Control District (PVWCD) on December 3, 2008. The statement requested that the Oregon Department of Fish and Wildlife (ODFW) carefully consider the potential economic impact to district water users if a fish screening and/or by-pass device is eventually required. This is justified given the unique nature and location of the device, underneath a surface water reservoir. Given the current acres supplied by this water source, and the estimated cost of a fish screening and/or by-pass device, the PVWCD patrons would not be capable of funding this device within one year of notification by ODFW. Therefore, the PVWCD requests sufficient time to acquire cost-share funds, design, get approval from ODFW, and install the device in the event a fish screening and/or by-pass device is required by ODFW.

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

22. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

- 23. Delivery systems sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Application T-7503.
- 24. The proposed change would not result in enlargement of the rights.
- 25. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

- 26. An affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of a portion of the right was received from the County Commissioners for Union County, as follows:

Certificate: 4171 in the name of G. M. GILKISON (confirmed by Powder River decree)
Use: IRRIGATION of 1.0 ACRE
Priority Date: 1894
Limit/Duty: ONE-FORTIETH cfs per acre
Source: WOLF CREEK, tributary to POWDER RIVER

Authorized Point of Diversion:

Ditch Name
BLEVENS DITCH

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	38 E	WM	13	SW SE	1.0

- 27. An affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of a portion of the right The portion of the second right to be cancelled is as follows:

Certificate: 4587 in the name of J. M. YOUNCE
Use: IRRIGATION of 2.0 ACRES
Priority Date: 1893 and 1895
Limit/Duty: ONE-FORTIETH cfs per acre
Source: WOLF CREEK, tributary to POWDER RIVER

Authorized Point of Diversion:

DITCH NAME
GILKINSON & GORHAM DITCH

Authorized Place of Use to be Cancelled:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Priority
6 S	39 E	WM	18	SE SW	1.0	1895
6 S	39 E	WM	18	SW SE	1.0	1893

Conclusions of Law

The changes proposed in transfer application T-7503 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portions of the rights should be cancelled.

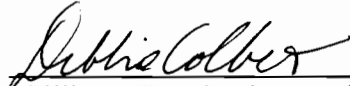
Now, therefore, it is ORDERED:

1. The change in points of diversion proposed in application T-7503 is approved. The portions of the rights that have been abandoned are cancelled.
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 4170, 4171, 4324, 4375, 4587 and 8251 and any related decree.
3. The abandoned portions of the water rights evidenced by Certificates 4171 and 4587 described in Findings of Fact #26 and #27 are cancelled.
4. Water right Certificates 4170, 4324, 4375, 4587 and 8251 are cancelled. New certificates will be issued describing the portions of the rights evidenced by Certificates 4170 and 4375 not affected by this transfer and cancellation.
5. Water Right Certificate 4171 is modified. A new certificate describing the right under Certificate 4171 affected by this transfer and cancellation will be issued in conjunction with the Final Order approving an ORS 541.329 petition by Powder Valley Water Control District to map the location and use of water rights within the district.
6. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.
7. Within one year after receiving written notification from the Oregon Department of Fish and Wildlife (ODFW) that a fish screening and/or by-pass device is required, the water user shall install a screening and/or by-pass device, as appropriate, at the new point of diversion. The fish screening and/or by-pass device must meet ODFW's design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screening and/or by-pass device meets ODFW's criteria. Once installed the water user shall maintain and operate the fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
8. When required by the Department, the water user shall install, maintain and operate 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 measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
9. 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 applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.

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

Dated at Salem, Oregon this 18th day of May 2009.


Phillip C. Ward, Director *PCW*

Mailing date: MAY 20 2009