

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

In the Matter of Transfer Application)
T-10233, Crook County)
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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

River Run Ranch LLC (Lorraine Tognoli)
13223 NE Oneil Road
Redmond, OR 97756

Agent

Newton Consultants, Inc.
521 SW 6th Street, Suite 100
Redmond, OR 97756

Findings of Fact

Background

1. On August 24, 2006, River Run Ranch LLC (Lorraine Tognoli) filed an application to change the character of use, place of use, and additional points of diversion under Certificate 75556, which was superseded by Certificate 81601 on December 5, 2005. The Department assigned the application number T-10233.
2. On November 20, 2006, a deficiency letter was sent to the applicant citing deficiencies that needed to be corrected on the transfer application and map. On January 3, 2007, the applicant sent in a corrected and revised transfer application and map, which included additional lands to be transferred under Certificate 81601 and changes in place of use and additional points of diversion under Certificate 6313.

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.

3. On May 22, 2007, Department staff had a phone conference with the applicant's consultant to discuss additional application and mapping deficiencies. On June 7, August 21 and 23, 2007, the applicant sent in corrected and revised transfer applications and maps.

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

Certificate: 81601 in the name of PEOPLES IRRIGATION CO. (confirmed by Crooked River (F) Decree, Volume 1 at Page 449)

Use: DOMESTIC, LIVESTOCK and IRRIGATION of 225.1 ACRES

Priority Date: 1904/1910

Rate: 2.81 CUBIC FEET PER SECOND (cfs)

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year

Source: CROOKED RIVER, tributary to DESCHUTES RIVER

Authorized Points of Diversion:

| POD | Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|-----|------|------|-----|-----|-------|---|
| 1 | 15 S | 16 E | WM | 8 | NW SW | 1920 feet North and 340 feet East from the SW corner of Section 8 |
| 3 | 14 S | 14 E | WM | 24 | NE SE | Pump: 450 feet West from the East ¼ corner of Section 24 |
| 4 | 14 S | 14 E | WM | 23 | SW NE | Pump: 1020 feet North and 500 feet East from the center ¼ corner of Section 23 |
| 5 | 14 S | 14 E | WM | 23 | SW NW | Pump: 1000 feet North and 1400 feet West from the center ¼ corner of Section 23 |

Authorized Place of Use:

| DOMESTIC, LIVESTOCK AND IRRIGATION | | | | | | | |
|------------------------------------|------|------|-----|-----|------|--------------|----------------|
| POD | Twp | Rng | Mer | Sec | Q-Q | Acres | Change |
| 1 | 14 S | 14 E | WM | 23 | SWNE | 20.5 | POD |
| 1 | 14 S | 14 E | WM | 23 | SWNE | 9.0 | POU & POD |
| 1 | 14 S | 14 E | WM | 23 | SENE | 15.6 | POU & POD |
| 1 | 14 S | 14 E | WM | 23 | SENE | 3.5 | POD |
| 1 | 14 S | 14 E | WM | 23 | SWNW | 23.6 | POD |
| 1 | 14 S | 14 E | WM | 23 | SENE | 23.9 | POD |
| 1 | 14 S | 14 E | WM | 23 | NESW | 30.0 | POU & POD |
| 1 | 14 S | 14 E | WM | 23 | NWSW | 29.0 | USE, POU & POD |
| 1 | 14 S | 14 E | WM | 23 | NWSW | 1.0 | POU & POD |
| 1 | 14 S | 14 E | WM | 23 | SWSW | 10.8 | POU & POD |
| 1 | 14 S | 14 E | WM | 23 | SWSW | 29.2 | POD |
| 4 | 14 S | 14 E | WM | 23 | SWNE | 1.9 | POD |
| 4 | 14 S | 14 E | WM | 23 | SWNE | 3.4 | APOD |
| 4 | 14 S | 14 E | WM | 23 | SENE | 6.1 | POD |
| 5 | 14 S | 14 E | WM | 23 | SWNW | 11.4 | POD |
| 5 | 14 S | 14 E | WM | 23 | SENE | 6.2 | POD |
| TOTAL: | | | | | | 225.1 | |

5. Application T-10233 proposes to move to and/or add the following points of diversion (as further described in Findings #6 and #7 below), which are located up to approximately one mile both upstream and downstream from the authorized points of diversion, as follows:

Proposed Points of Diversion:

| POD | Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|-----|------|------|-----|-----|------|--|
| 8 | 14 S | 14 E | WM | 23 | NWNW | 1450 feet North and 2500 feet West from the center of Section 23 |
| 9 | 14 S | 14 E | WM | 23 | SWNW | 565 feet North and 1700 feet West from the center of Section 23 |
| 10 | 14 S | 14 E | WM | 23 | SWNE | 805 feet North and 845 feet East from the center of Section 23 |
| 11 | 14 S | 14 E | WM | 24 | SESW | 1915 feet South and 845 feet West from the center of Section 24 |

6. For the following 129.7 acres of land currently authorized under the right, Application T-10233 proposes to change the points of diversion to:

Proposed Points of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Acres | Proposed POD |
|---------------|------|-----|-----|------|--------------|--------------|
| 14 S | 14 E | WM | 23 | SWNE | 20.5 | 11 |
| 14 S | 14 E | WM | 23 | SWNE | 1.9 | 11 |
| 14 S | 14 E | WM | 23 | SWNE | 3.4 | 3 & 4 |
| 14 S | 14 E | WM | 23 | SENE | 3.5 | 3 |
| 14 S | 14 E | WM | 23 | SWNW | 35.0 | 5, 8, 9 & 11 |
| 14 S | 14 E | WM | 23 | SENE | 36.2 | 4, 5, 8 & 11 |
| 14 S | 14 E | WM | 23 | SWSW | 29.2 | 11 |
| TOTAL: | | | | | 129.7 | |

7. Application T-10233 also proposes to change the place of use and point of diversion for the following 66.4 acres under the right to:

Proposed Place of Use and Proposed Points of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Acres | Proposed POD |
|---------------|------|-----|-----|------|-------------|--------------|
| 14 S | 14 E | WM | 24 | SWSW | 17.3 | 11 |
| 14 S | 14 E | WM | 24 | SESW | 6.4 | 3 |
| 14 S | 14 E | WM | 23 | NESE | 10.5 | 3 |
| 14 S | 14 E | WM | 23 | NESE | 17.7 | 11 |
| 14 S | 14 E | WM | 23 | NWSE | 14.5 | 11 |
| TOTAL: | | | | | 66.4 | |

8. Application T-10233 also proposes to change the character of use of up to 116.0 acre-feet of water currently authorized for irrigation of 29.0 acres (listed in the table in Finding of Fact #4) to POND MAINTENANCE in a reservoir proposed to be constructed under Application R-86674 for multi-purpose use, and to change the place of use and the point of diversion as follows:

| POND MAINTENANCE | | | | | | |
|------------------|------|-----|-----|------|--|---|
| Twp | Rng | Mer | Sec | Q-Q | Proposed POD | NOTES |
| 14 S | 14 E | WM | 23 | NENE | 10 | <i>Annual duty of water from irrigated acreage to be converted to a maximum total annual volume of 116.0 acre-feet for maintenance of water level in the reservoir.</i> |
| 14 S | 14 E | WM | 23 | NWNE | | |
| TOTAL: | | | | | Water volume equivalent to the duty from 29.0 acres | |

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

Certificate: 6313 in the name of H. L. CORBETT (perfected under Permit S-3397)

Use: SUPPLEMENTAL IRRIGATION of 246.0 ACRES

Priority Date: MAY 21, 1917

Rate: 3.06 CUBIC FEET PER SECOND (cfs)

Limit/Duty: ONE-EIGHTIETH of one cfs per acre

Source: CROOKED RIVER, tributary to DESCHUTES RIVER

Authorized Place of Use:

| SUPPLEMENTAL IRRIGATION | | | | | | |
|-------------------------|------|-----|-----|------|--------------|-----------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Change |
| 14 S | 14 E | WM | 23 | SWNE | 9.0 | POU & POD |
| 14 S | 14 E | WM | 23 | SWNE | 25.8 | POD |
| 14 S | 14 E | WM | 23 | SENE | 15.6 | POU & POD |
| 14 S | 14 E | WM | 23 | SENE | 24.4 | POD |
| 14 S | 14 E | WM | 23 | SWNW | 35.0 | POD |
| 14 S | 14 E | WM | 23 | SENE | 36.2 | POD |
| 14 S | 14 E | WM | 23 | NESW | 30.0 | POU & POD |
| 14 S | 14 E | WM | 23 | NWSW | 30.0 | POU & POD |
| 14 S | 14 E | WM | 23 | SWSW | 10.8 | POU & POD |
| 14 S | 14 E | WM | 23 | SWSW | 29.2 | POD |
| TOTAL: | | | | | 246.0 | |

10. Certificate 6313 does not describe the location of the point of diversion, however information is available from a November 21, 1962 letter from Chris Wheeler, State Engineer, in the Application S-5553/Permit S-3397 file indicating that the point of diversion was located in the application as a pumping point located as follows:

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q |
|------|------|-----|-----|-------|
| 14 S | 14 E | WM | 23 | NW SE |

11. Application T-10233 proposes to move the authorized point of diversion up to approximately one mile both upstream and downstream to the following points of diversion located at:

Proposed Points of Diversion:

| POD | Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|-----|------|------|-----|-----|-------|---|
| 3 | 14 S | 14 E | WM | 24 | NE SE | 450 feet West from the East 1/4 corner of Section 24 |
| 4 | 14 S | 14 E | WM | 23 | SW NE | 1020 feet North and 500 feet East from the center 1/4 corner of Section 23 |
| 5 | 14 S | 14 E | WM | 23 | SW NW | 1000 feet North and 1400 feet West from the center 1/4 corner of Section 23 |
| 8 | 14 S | 14 E | WM | 23 | NWNW | 1450 feet North and 2500 feet West from the center of Section 23 |
| 9 | 14 S | 14 E | WM | 23 | SWNW | 565 feet North and 1700 feet West from the center of Section 23 |
| 11 | 14 S | 14 E | WM | 24 | SESW | 1915 feet South and 845 feet West from the center of Section 24 |

12. For the following 150.6 acres of land currently authorized under the right, Application T-10233 proposes to change the points of diversion to:

Proposed Points of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Acres | Proposed POD |
|---------------|------|-----|-----|-------|--------------|--------------|
| 14 S | 14 E | WM | 23 | SWNE | 3.4 | 4 |
| 14 S | 14 E | WM | 23 | SWNE | 22.4 | 11 |
| 14 S | 14 E | WM | 23 | SE NE | 24.4 | 3 |
| 14 S | 14 E | WM | 23 | SWNW | 35.0 | 5, 8, 9 & 11 |
| 14 S | 14 E | WM | 23 | SE NW | 36.2 | 4, 5, 9 & 11 |
| 14 S | 14 E | WM | 23 | SWSW | 29.2 | 11 |
| TOTAL: | | | | | 150.6 | |

13. Application T-10233 also proposes to change the place of use and points of diversion for the following 95.4 acres under the right to:

Proposed Place of Use and Proposed Points of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Acres | Proposed POD | NOTES |
|---------------|------|-----|-----|------|-------------|--------------|-------------------------------------|
| 14 S | 14 E | WM | 22 | SENE | 20.0 | 8 & 11 | <i>Layered on Certificate 610</i> |
| 14 S | 14 E | WM | 22 | NESE | 7.0 | 8 & 11 | <i>Layered on Certificate 80795</i> |
| 14 S | 14 E | WM | 22 | NWSE | 11.9 | 8 & 11 | <i>Layered on Certificate 80795</i> |
| 14 S | 14 E | WM | 22 | SWSE | 8.1 | 8 & 11 | <i>Layered on Certificate 80795</i> |
| 14 S | 14 E | WM | 23 | NWNE | 0.6 | 4 | --- |
| 14 S | 14 E | WM | 23 | NENW | 7.4 | 4 | --- |
| 14 S | 14 E | WM | 23 | NENW | 1.0 | 11 | --- |
| 14 S | 14 E | WM | 23 | NWNW | 1.0 | 5 | --- |
| 14 S | 14 E | WM | 24 | NWSW | 5.3 | 3 | <i>Layered on Certificate 80795</i> |
| 14 S | 14 E | WM | 24 | NWSW | 9.4 | 11 | <i>Layered on Certificate 80795</i> |
| 14 S | 14 E | WM | 24 | SWSW | 17.3 | 11 | --- |
| 14 S | 14 E | WM | 24 | SESW | 6.4 | 3 | --- |
| TOTAL: | | | | | 95.4 | | |

14. Notice of the application for transfer was published on August 29, 2006, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
15. On October 1, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10233 to the applicant. The draft Preliminary Determination set forth a deadline of November 15, 2007, for the applicant to respond and to resolve deficiencies with the transfer application and map. On November 15 and 23, 2007, the applicant amended the application and maps, and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

16. Review of the revised application and maps indicated that some questions and discrepancies remained to be resolved; so on February 13, 2008, the Department mailed a copy of a revised draft preliminary determination to the applicant, with a request for further modification and clarification of the maps and application. On March 5, 2008, the applicant submitted revised maps and application material, thereby remedying the remaining deficiencies.
17. On March 7, 2008, the Department issued a Preliminary Determination proposing to approve Transfer T-10233 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 March 18, 2008, and in the Central Oregonian newspaper on March 18, 25 and April 1, 2008, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
18. The Oregon Department of Fish and Wildlife (ODFW) has determined that fish screening and/or by-pass devices are necessary at the new points of diversion to prevent fish from entering the diversions and/or safely transport fish back to the body of water from which the fish were diverted and that the diversions are not currently equipped with appropriate fish screening and/or by-pass devices. These diversions may be eligible for screening cost share funds.

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

19. 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.
20. A pump, pipeline, and sprinkler system 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-10233.
21. As described in Finding #8 above, 29.0 acres of irrigation rights under Certificate 81601 are being moved to a reservoir, with a surface area of 17.0 acres, for pond maintenance purposes. If the use of water for pond maintenance does not exceed the quantity of water that could have been used for irrigation, enlargement of the right will be avoided. Therefore, the proposed changes to Certificate 81601 would not result in enlargement of the right, provided the annual volume of water diverted for pond maintenance does not exceed 116.0 acre-feet during the irrigation season of each year.
22. The proposed changes to Certificate 6313 would not result in enlargement of the water right.
23. The proposed changes would not result in injury to other water rights.

Partial Cancellation of a Water Right

24. Affidavits certifying that portions of water right Certificates 81601 and 6313 have been abandoned and requesting cancellation of those portions were submitted by the applicant on January 3, 2007, August 23, 2007, and November 15, 2007.

25. The portion of the first water right to be cancelled is as follows:

Certificate: 81601 in the name of PEOPLES IRRIGATION COMPANY (confirmed by Crooked River (F) decree)

Use: IRRIGATION of 5.0 ACRES

Priority Date: 1904/1910

Rate: 0.062 CUBIC FOOT PER SECOND (cfs)

ONE-EIGHTIETH of one cfs per acre, not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year

Source: CROOKED RIVER, tributary to DESCHUTES RIVER

Authorized Place of Use to be Cancelled:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|---------------|------|-----|-----|------|------------|
| 14 S | 14 E | WM | 23 | SWNW | 5.0 |
| TOTAL: | | | | | 5.0 |

26. The portion of the second water right to be cancelled is as follows:

Certificate: 6313 in the name of H. L. CORBETT (perfected under Permit S-3397)

Use: SUPPLEMENTAL IRRIGATION of 72.2 ACRES

Priority Date: MAY 21, 1917

Rate: 0.9 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: ONE-EIGHTIETH of one cfs per acre

Source: CROOKED RIVER, tributary to DESCHUTES RIVER

Authorized Place of Use to be Cancelled:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|---------------|------|-----|-----|------|-------------|
| 14 S | 14 E | WM | 23 | SWNE | 5.2 |
| 14 S | 14 E | WM | 23 | SWNW | 5.0 |
| 14 S | 14 E | WM | 23 | SENE | 3.8 |
| 14 S | 14 E | WM | 23 | NESE | 28.2 |
| 14 S | 14 E | WM | 23 | NWSE | 30.0 |
| TOTAL: | | | | | 72.2 |

Conclusions of Law

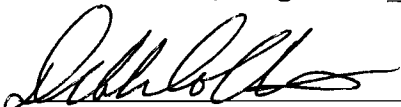
The changes in character of use, place of use and points of diversion proposed in transfer application T-10233 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned rights should be cancelled.

Now, therefore, it is ORDERED:

1. The changes in character of use, place of use and points of diversion proposed in application T-10233 are approved. The portions of the rights that have been abandoned are cancelled.
2. Water right Certificates 81601 and 6313 are cancelled. New certificates will be issued describing the portions of the rights not affected by this transfer and cancellation.
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 81601 and 6313 and any related decree.
4. The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.
5. The quantity of water diverted at the additional point of diversion (POD 3) for 3.4 acres located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 23, T. 14S, R. 14E, W.M., together with that diverted at the original point of diversion (POD 4), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 4).
6. The annual volume of water for pond maintenance shall not exceed 116.0 acre-feet, diverted during the irrigation season of each year.
7. The former place of use of the transferred rights shall no longer receive water under the rights.
8. Prior to diverting water, the water user shall install fish screening and/or by-pass devices, as appropriate, at the new points 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 screens and/or by-pass devices meet 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 devices were installed to the state's criteria. The water user shall maintain and operate the fish screens and/or by-pass devices, as appropriate, at the points of diversion consistent with ODFW's operational and maintenance standards.
9. When required by the Department, the water user shall install, maintain and operate an in-line flow meter, weir, or other suitable device(s) for measuring and recording the quantity of water diverted. The type and plans of the measuring device(s) must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

10. When required by the Department, the water user shall install, maintain and operate a headgate or headgates to control and regulate the quantity of water diverted. The type and plans of the headgate(s) must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
11. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2009**. 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.
12. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 7th day of May 2008.


Phillip C. Ward, Director

Mailing date: MAY 15 2008

