

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

Certificate: 12380 in the name of E.F. STRAUGHAN (perfected under Permit S-12045)
Use: IRRIGATION OF 22.20 ACRES
Priority Date: JANUARY 22, 1936
Rate: 0.28 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, 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: BIRCH CREEK, tributary of the UMATILLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
2 N	32 E	WM	33	SW NW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	32 E	WM	29	NW SE	4.50
2 N	32 E	WM	29	SW SE	17.70
TOTAL:					22.20

5. Transfer Application T-11553 proposes to change the point of diversion to reflect historic use approximately 1¼ miles downstream from the original point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	32 E	WM	29	NW SE	POD No. 1 – GPS Coordinates: N. 45.6203°, W. -118.8358°

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

Certificate: 2622 in the name of AMANDA J. SOUTHWELL AND HEIRS OF JOHN SOUTHWELL (confirmed by decree of the Circuit Court of the State of Oregon for Umatilla County)
Use: IRRIGATION OF 29.02 ACRES AND STOCK USE
Priority Date: 1895
Rate/Limit: 0.362 CUBIC FOOT PER SECOND, subject to the provisions of paragraph 33 of said decree and all other conditions and limitations contained in said decree
Source: BIRCH CREEK, tributary of the UMATILLA RIVER

Authorized Places of Use:

IRRIGATION AND STOCK USE					
Twp	Rng	Mer	Sec	Q - Q	Acres
2 N	32 E	WM	29	NW SE	20.00
2 N	32 E	WM	29	SW SE	4.52
2 N	32 E	WM	29	SE SE	4.50
TOTAL:					29.02

7. Certificate 2622 does not describe the location of the point of diversion for this water use. However information is available from the Birch Creek map of the Umatilla River basin adjudication indicating that the original point of diversion on Birch Creek is better described and located as follows:

Twp	Rng	Mer	Sec	Q-Q	Diversion Name
2 N	32 E	WM	33	SW NW	PRIVATE DITCH

8. Transfer Application T-11553 proposes to change the point of diversion to reflect historical use approximately 1¼ miles downstream from the original point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	32 E	WM	29	NW SE	POD No. 1 – GPS Coordinates: N. 45.6203°, W. -118.8358°

9. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

Transfer Review Criteria (ORS 540.532 and OAR 690-380-2120)

10. Pursuant to OAR 690-380-2120(2)(a), evidence has been submitted that the actual, current point of diversion for the water right in question, as described in Finding No. 8, has been in use for more than 10 years.
11. Pursuant to OAR 690-380-2120 (3), the Department provided the applicant a list of the affected water right and a copy of the notice to be provided to the affected water right holder. On October 22, 2014, the applicant hand delivered to the Department written proof of service of notice of the proposed transfer on the affected water right holder.
12. Water has been used within the last five years according to the terms and conditions of the right. However, the applicant has provided information as to the abandonment of 1.48 acres around the immediate farm complex and the use of water for Domestic uses out of Birch Creek. These abandoned portions are further described below in Findings of Fact #16 and #17. There is no other evidence available that would demonstrate that any other portions of the rights are subject to forfeiture under ORS 540.610.
13. A diversion structure, pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
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.

Partial Cancellation of a Water Right

16. The Department has determined that the use of water for Domestic use under Certificate 2622 has not been exercised for a great many years and asked the landowner to concur. The landowner also acknowledged that some lands have not been irrigated around the farm complex and are now a road, various out-buildings and storage area. The “evidence of use” form and map accompanying the application also did not describe the Domestic use and/or identify a delivery system describing such use. These portions of the water right should likely be cancelled. To accomplish this, the Department has provided the applicant a “Partial Cancellation of a Water Right” voluntary cancellation affidavit for his concurrence.
17. On November 10, 2014, the Department received a voluntary cancellation affidavit from Thomas E. Straughan, requesting to cancel portions of Certificate 2622 appurtenant to Tax Lot 2600, within Section 29, Township 1 North, Range 32 East, WM. The request to cancel the domestic portion only includes the use, and no quantity of water is associated with it.

The portions of the right proposed to be cancelled are described as follows:

Certificate: 2622 in the name of AMANDA J. SOUTHWELL AND HEIRS OF JOHN SOUTHWELL (confirmed by decree of the Circuit Court of the State of Oregon for Umatilla County)
Uses: IRRIGATION OF 1.48 ACRES AND DOMESTIC
Priority Date: 1895
Rate/Limit: 0.018 CUBIC FOOT PER SECOND (*for irrigation portion only*)
Source: BIRCH CREEK, tributary to the Umatilla River

Authorized Uses to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	32 E	WM	22	SW SE	1.48

DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Footprint (acres)
2 N	32 E	WM	29	NW SE	20.00
2 N	32 E	WM	29	SW SE	6.00
2 N	32 E	WM	29	SE SE	4.50

Conclusions of Law

The proposed change in points of diversion to reflect historical use in Transfer Application T-11553 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000 and the abandoned portions of the right described by Certificate 2622 are cancelled.

Now, therefore, it is ORDERED:

1. The change in points of diversion to reflect historical use proposed in Transfer Application T-11553 are approved and effective immediately. The portions of Water Right Certificate 2622 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 Certificate 2622 and 12380 and any related decree.
3. Water right Certificates 2622 and 12380 are cancelled. Certificates 89756 and 89757 will be issued to describe the change in points of diversion to reflect historical use for the rights included in T-11553. Certificate 89755 shall be issued to describe the portion of Certificate 12380 not modified by this order. Together, the new certificates shall supersede Certificates 2622 and 12380.
4. 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.
5. Prior to October 1, 2016, 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.
6. Prior to October 1, 2016, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

Dated at Salem, Oregon this 15 day of December, 2014.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing date: DEC 24 2014