

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

In the Matter of Transfer Applications) FINAL ORDER APPROVING CHANGES
T-10572 and T-10717, Malheur) IN POINTS OF DIVERSION TO REFLECT
County) HISTORIC 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 T-10572

SCOTT and ANGELA HARRIS
2398 BEAUMONT ROAD
NYSSA OR 97913

Applicant T-10717

STEPHEN CONANT
2388 BEAUMONT ROAD
NYSSA OR 97913

Findings of Fact

Background

1. On March 24, 2008, Scott and Angela Harris filed a transfer application for authorization of a historic point of diversion under Certificate 75711. The Department assigned the application number T-10572.
2. On October 1, 2008, Stephen Conant filed a transfer application for authorization of historic points of diversion under Certificate 75711. The Department assigned the application number T-10717.
3. On June 22, 2009, Oregon Department of Fish and wildlife submitted a revised Water Right and Diversion Transfer Comment Form.
4. On July 24 2009, Stephen Conant submitted a revised application and map.

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, 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.

T-10572 (SCOTT and ANGELA HARRIS)

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

Certificate: 75711 in the name of Kingman Colony Irrigation Company (perfected under Permit S-1150)

Use: IRRIGATION of 2.0 ACRES

Priority Date: FEBRUARY 17, 1912

Rate: 0.02 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre

Source: SNAKE RIVER, tributary to COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	POD
20 S	47 E	WM	31	NW SW	1
21 S	46 E	WM	12	SE SE	2
21 S	46 E	WM	14	NE SE	3
21 S	46 E	WM	22	NE SE	4

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
20 S	47 E	WM	31	SW SW	1.0
21 S	47 E	WM	6	NW NW	1.0

6. Certificate 75711 does not specify which lands are irrigated by a particular authorized point of diversion; however the points of diversion are mapped on the final proof survey. The delivery system has not been in place for many years so it is difficult to determine the authorized point of diversion for these lands at this time. It appears that water may have been diverted from POD #1 to irrigate the authorized places of use described in this order. POD #1 is located as follows:

Twp	Rng	Mer	Sec	Q-Q	POD
20 S	47 E	WM	31	NW SW	#1

7. Application T-10572 proposes to move the authorized point of diversion to reflect historical use. The historic point of diversion is more than ¼ mile upstream from the authorized point of diversion and is located at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
20 S	47 E	WM	31	SW SW	HARRIS POD: 20 FEET NORTH AND 350 FEET EAST FROM THE NW CORNER OF SECTION 6

T-10717 (STEPHEN CONANT)

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

Certificate: 75711 in the name of Kingman Colony Irrigation Company (perfected under Permit S-1150)

Use: IRRIGATION of 110.74 ACRES

Priority Date: FEBRUARY 17, 1912

Rate: 1.32 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre

Source: SNAKE RIVER, tributary to COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	POD
20 S	47 E	WM	31	NW SW	1
21 S	46 E	WM	12	SE SE	2
21 S	46 E	WM	14	NE SE	3
21 S	46 E	WM	22	NE SE	4

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
21 S	46 E	WM	1	NE NE	1	40.03
21 S	46 E	WM	1	NW NE	2	20.00
21 S	47 E	WM	6	NW NW	2	17.50
21 S	47 E	WM	6	SW NW	3	33.21
Total Acres:						110.74

9. Certificate 75711 does not specify which lands are irrigated by which authorized point of diversion; however the points of diversion are mapped on the final proof survey. It appears that water was diverted from POD #1 to irrigate the authorized places of use described in this order. The delivery system has not been in place for many years so it is difficult to determine the authorized point of diversion at this time. POD #1 is located as follows:

Twp	Rng	Mer	Sec	Q-Q	POD
20 S	47 E	WM	31	NW SW	#1

10. Transfer Application T-10717 proposes to move the point of diversion to two points, one approximately 2800 feet (CONANT POD #1) and the other approximately 2000 feet (CONANT POD #2) upstream from the authorized point of diversion to reflect historical use. The points are located at:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
21 S	47 E	WM	6	SW NW	3	CONANT POD #1: 2630 FEET SOUTH AND 1210 FEET EAST FROM THE NW CORNER OF SECTION 6
21 S	46 E	WM	1	NW NE	1	CONANT POD#2: 680 FEET SOUTH AND 100 FEET WEST FROM THE NE CORNER OF SECTION 1

11. The points of diversion identified in Finding of Fact #10 have historically irrigated specific places of use which are defined below:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	POD	Tax Lot
21 S	46 E	WM	1	NE NE	1	40.03	CONANT #2	100
21 S	46 E	WM	1	NW NE	2	20.00	CONANT #2	100
21 S	47 E	WM	6	NW NW	2	17.50	CONANT #1	300
21 S	47 E	WM	6	SW NW	3	33.21	CONANT #1	300

12. There is an underlying supplemental water right (Certificate 27563) appurtenant to a portion of the place of use described in Finding of Fact #8. Certificate 27563 shares a point of diversion with the proposed POD #1 which is described in Finding of Fact #9. Though the point of diversion under Certificate 27563 has been changed to follow the movements of a naturally changing stream channel, the right was not included in the change in point of diversion proposed in Transfer Application T-10717, because it meets the criteria pursuant to ORS 540.510 (5). Therefore, the change in point of diversion under Certificate 27563 can be made without requiring a water right transfer.
13. Notice of the application for transfer T-10572 was published on April 8, 2008 and notice of the application for transfer T-10717 was published on November 11, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notices.
14. 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 for T-10572 and T-10717 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 currently equipped with appropriate fish screening and/or by-pass devices.
15. On July 15, 2009, the Department mailed a copy of the draft final order to the applicants proposing to approve Transfer Applications T-10572 and T-10717. The draft final order set forth a deadline of August 17, 2009, for the applicants to respond. The applicants requested on July 23, 2009 (T-10572) and July 24, 2009 (T-10717) that the Department proceed with issuance of a Final Order and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfers.

Transfer Review Criteria (OAR 690-380-4010)

16. Pursuant to OAR 690-380-2120(2)(a), evidence has been submitted that the actual, current points of diversion for the water right in question, as described in Findings of Fact #5 and #8, have been in use for more than 10 years.
17. Pursuant to OAR 690-380-2120(2)(c) the Watermaster provided a statement that to his knowledge there has been no complaint of injury due to the use of water at the actual, current points of diversion, prior to the requests of T-10572 and T-10717.
18. The Department did not identify any affected water rights pursuant to OAR 690-380-2120(3).
19. Water has been used within the last five years according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
20. Pumps, pipelines, and sprinkler systems sufficient to use the full amount of water allowed under the existing right are present.
21. The proposed changes would not result in enlargement of the right.
22. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The proposed changes in point of diversion to reflect historical use in applications T-10572 and T-10717 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 proposed in T-10572 and T-10717 are approved and effective immediately.
2. Water right certificate 75711 is cancelled. A new certificate will be issued to describe the change in point of diversion for the portion of the rights included in T-10572 and T-10717. Another new certificate shall be issued to describe the portion of Certificate 75711 not modified by this order. Together, the new certificates shall supersede Certificate 75711.
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 Certificate 75711 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 point of diversion.
5. When required by the Department, the water users shall install and maintain headgates, in-line flow meters, weirs, or other suitable devices for measuring and recording the quantity of

water diverted. The type and plans of the headgates and measuring devices must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

6. The water users shall maintain and operate a fish screening and/or by-pass device, as appropriate, at each point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.

Dated at Salem, Oregon this 23rd day of September 2009.


Phillip C. Ward, Director *PCW*

Mailing date: SEP 28 2009