

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

In the Matter of Transfer Application)
T-10311, Umatilla County)
)
)
)
)

FINAL ORDER APPROVING
CHANGES IN POINTS OF DIVERSION
AND PLACE OF USE AND PARTIAL
CANCELLATION OF CERTAIN
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

PENDLETON COUNTRY CLUB
69772 HWY 395 SOUTH
PENDLETON, OR 97801

Findings of Fact

Background

1. On February 8, 2007, the Pendleton Country Club filed an application to change the point of diversion and place of use under Certificate 56171. The Department assigned the application number T-10311.
2. On August 11, 2008, the Pendleton Country Club filed an amendment to also change point of diversion under Certificate 56172. On September 7, 2010, and November 16, 2010, the applicant sent in revised maps, describing changes to the place of use under the two water rights proposed.
3. The portion of the FIRST right to be transferred is as follows:
Certificate: 56171 in the name of J. A. GUDERIAN (confirmed by Umatilla River decree)
Use: SUPPLEMENTAL IRRIGATION of 47.0 ACRES

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.

Priority Date: 1873 for 7.85 acres, 1889 for 7.85 acres and 1900 for 31.3 acres

Rate: 0.58 CUBIC FOOT PER SECOND

Limit/Duty: subject to the provisions of Paragraph 33 of said decree and all other conditions and limitations contained in said decree

Source: BIRCH CREEK, a tributary of the UMATILLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
1 N	32 E	WM	22	NW SE	700 FEET SOUTH AND 1800 FEET WEST FROM THE E¼ CORNER OF SECTION 22

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
1 N	32 E	WM	15	SW NE	4.0
1 N	32 E	WM	15	SE NW	5.0
1 N	32 E	WM	15	NE SW	3.0
1 N	32 E	WM	15	NW SE	26.0
1 N	32 E	WM	15	SW SE	9.0

4. Application T-10311 proposes to change the point of diversion for the above described water right downstream approximately 4,500 feet to new POD #1 and to add new POD #2 located approximately 5,700 feet downstream:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
1 N	32 E	WM	15	SW SE	POD #1 - 710 FEET NORTH AND 2340 FEET WEST FROM THE SE CORNER OF SECTION 15
1 N	32 E	WM	15	NE SW	POD #2 - 2265 FEET NORTH AND 3015 FEET WEST FROM THE SE CORNER OF SECTION 15

5. Application T-10311 also proposes to change the place of use for the above described water right to:

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q - Q	Acres (per Priority Date)		
					1873	1889	1900
1 N	32 E	WM	15	SW NE	2.6	--	3.6
1 N	32 E	WM	15	SE NW	4.05	3.35	14.4
1 N	32 E	WM	15	NE SW	0.4	1.2	6.1
1 N	32 E	WM	15	NW SE	0.4	3.3	5.5
1 N	32 E	WM	15	SW SE	0.4	--	1.7
Sub-Totals:					7.85	7.85	31.3
TOTAL:					47.0 Acres		

6. The portion of the SECOND water right to be transferred is as follows:
Certificate: 56172 in the name of S. H. ROCKWELL (confirmed by Umatilla River decree)
Use: SUPPLEMENTAL IRRIGATION of 1.9 ACRES
Priority Date: 1894 for Tract #1
Rate: 0.022 CUBIC FOOT PER SECOND
Limit/Duty: subject to the provisions of Paragraph 33 of said decree and all other conditions and limitations contained in said decree
Source: BIRCH CREEK, a tributary to the UMATILLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
1 N	32 E	WM	22	NW SE	-- not specified

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
1 N	32 E	WM	15	SE SW	1.9

7. Application T-10311 proposes to change the point of diversion for the above described water right downstream approximately 4,500 feet to new POD #1 and to add new POD #2 located approximately 5,700 feet downstream:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
1 N	32 E	WM	15	SW SE	POD #1 - 710 FEET NORTH AND 2340 FEET WEST FROM THE SE CORNER OF SECTION 15
1 N	32 E	WM	15	NE SW	POD #2 - 2265 FEET NORTH AND 3015 FEET WEST FROM THE SE CORNER OF SECTION 15

8. Notice of the application for transfer was published on February 20, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. 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.
10. On November 2, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10311 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 4, 2010, for the applicant to respond.
11. On November 8, 2010, the Department discovered an error in the calculation of the breakdown of acreage per Certificate 56171. The Department notified the applicant and Certified Water Rights Examiner (CWRE) about the acreage number changes. The CWRE provided a revised map to clarify the new acreages. The total amount of acres did not change, but only the breakdown of acres per each priority date, as reflected in Findings of Fact #3 and #5.
12. On November 17, 2010, the applicant requested the Department to 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 January 12, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10311 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 January 18, 2011, and in The Pendleton Record newspaper

on February 24 and March 3 and 10, 2011, 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 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.
- 15. 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-10311.
- 16. The proposed change would not result in enlargement of the rights.
- 17. The proposed change would not result in injury to other water rights.

Partial Cancellation of two Water Rights

- 18. On November 3, 2010, Calvin Tyer, President of the Pendleton Country Club, owner of the property appurtenant to the following water rights, has submitted two voluntary cancellation affidavits meeting the requirements of ORS 540.621.
- 19. The portion of the FIRST water right to be cancelled is described as follows:

Certificate: 56171 in the name of J. A. GUDERIAN (confirmed by Umatilla River decree)

Use: DOMESTIC and STOCK USE

Priority Date: 1873, 1889, 1900

Limit/Duty: subject to the provisions of Paragraph 33 of said decree and all other conditions and limitations contained in said decree

Source: BIRCH CREEK, a tributary of the UMATILLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
1 N	32 E	WM	22	NW SE	700 FEET SOUTH AND 1800 FEET WEST FROM THE E¼ CORNER OF SECTION 22

Place of Use to be cancelled: DOMESTIC & STOCK				
Twp	Rng	Mer	Sec	Q - Q
1 N	32 E	WM	15	SW NE
1 N	32 E	WM	15	SE NW
1 N	32 E	WM	15	NE SW
1 N	32 E	WM	15	NW SE
1 N	32 E	WM	15	SW SE

- 20. The portion of the SECOND water right to be cancelled is described as follows:

Certificate: 56172 in the name of S. H. ROCKWELL (confirmed by Umatilla River decree)

Use: DOMESTIC and STOCK USE

Priority Date: 1894 for Tract #1

Limit/Duty: subject to the provisions of Paragraph 33 of said decree and all other conditions and limitations contained in said decree

Source: BIRCH CREEK, a tributary to the UMATILLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
1 N	32 E	WM	22	NW SE	-- not specified

Place of Use to be cancelled: DOMESTIC & STOCK				
Twp	Rng	Mer	Sec	Q - Q
1 N	32 E	WM	15	SE SW

Conclusions of Law

The change in points of diversion and change in place of use proposed in Transfer Application T-10311 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned water right portions should be cancelled.

Now, therefore, it is ORDERED:

1. The changes in points of diversion and place of use proposed in application T-10311 are approved and the abandoned portions of water rights 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 56171 and 56172 and any related decree.
3. Water right certificates 56171 and 56172 are cancelled. New certificates will be issued describing those portions of the rights not transferred or cancelled by this order.
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 former places of use of the transferred right shall no longer receive water under the right.
6. 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.

7. Water use measurement conditions:
 - a. 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.
 - b. The water user shall maintain the meters or measuring devices in good working order.
 - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. 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.
9. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 13 day of April, 2011.


Dwight French, Water Rights Services Administrator, for
PHILIP C. WARD, DIRECTOR

Mailing date: APR 15 2011