BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of Transfer Application T-6875, Douglas County	))	FINAL ORDER APPROVING AN ADDITIONAL POINT OF DIVERSION

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

GERALDINE THURESSON
5907 UPPER COW CREEK ROAD
AZALEA, OR 97410

Findings of Fact

Background

1. On January 11, 1993, Neil M. Thuresson filed an application to change the point of diversion under Certificates 20184, 36165, 67779, 67780 and Permit S-48086. The Department assigned the application number T-6875.

2. On April 19, 1984, Certificate 20184 had been cancelled and superseded by Certificate 51964 and Certificate 36165 was also cancelled and superseded by Certificate 51966, so the transfer will act upon Certificates 51964, 51966, 67779 and 67780.

3. On September 14, 1995, a revised application map was received that identified authorized points of diversion associated with the water rights and the permit proposed to be affected by the transfer.

4. On December 11, 1995, the Department received a notarized statement consenting to the transfer from Geraldine Thuresson, being the other owner of record for the land to which the water rights involved in this transfer are appurtenant.

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.

5. On December 13, 2010, a request for assignment of the transfer to Geraldine Thuresson was received and processed; and Geraldine Thuresson requested to modify the transfer application by removing Permit S-48086 from T-6875, as well as removing the 0.3 acre of Certificate 51964 in the NE SW of Section 28 from the transfer.

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

Certificate: 51964 in the name of R. C. & C. F. HEAD (perfected under Permit S-19730)
Use: IRRIGATION of 15.9 ACRES
Priority Date: JULY 28, 1950
Rate: 0.199 CUBIC FOOT PER SECOND (CFS)
Limit/Duty: ONE-SEVENTIETH cfs per acre, not to exceed 3.5 acre-feet per acre per year
Source: COW CREEK, tributary to SOUTH UMPQUA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
31 S	4 W	WM	28	NE SW	NONE
31 S	4 W	WM	28	SE SW	NONE
31 S	4 W	WM	33	NW NE	NONE

Authorized Place of Use:

IRRIGATION					
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**Acres**
31 S	4 W	WM	28	SE SW	5.0
31 S	4 W	WM	33	NW NE	10.9
				TOTAL:	**15.9**

7. Certificate 51964 does not describe the locations of the points of diversion, however information from the water right file and the map received July 28, 1950 for Water Right Application S-25048/Permit S-19730 indicates that water is diverted with portable pumping plants throughout a reach between the following points:

Points Defining the Authorized Reach for Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
31 S	4 W	WM	28	NE SW	NORTH 11 DEGREES 45 MINUTES WEST, 2350 FEET FROM THE N ¼ CORNER OF SECTION 33
31 S	4 W	WM	33	NW NE	SOUTH 4 DEGREES 30 MINUTES EAST, 1300 FEET FROM THE N ¼ CORNER OF SECTION 33

8. Application T-6875 proposes to add a point of diversion located approximately 40 feet downstream from the lower end of the authorized diversion reach as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
31 S	4 W	WM	33	NW NE	1304 FEET SOUTH AND 91 FEET EAST FROM THE NORTH 1/4 CORNER OF SECTION 33

9. The SECOND right to be transferred in its entirety is as follows:

Certificate: 67779 in the name of NEIL M. THURESSON (perfected under Permit S-19730)

Use: IRRIGATION of 1.0 ACRE
Priority Date: JULY 28, 1950
Rate: 0.013 CUBIC FOOT PER SECOND (CFS)
Limit/Duty: ONE-SEVENTIETH cfs per acre, not to exceed 3.5 acre-feet per acre per year
Source: COW CREEK, tributary to SOUTH UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
31 S	4 W	WM	28	NE SW	NONE
31 S	4 W	WM	28	SE SW	NONE
31 S	4 W	WM	33	NW NE	NONE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
31 S	4 W	WM	33	NE NW	1.0

10. Certificate 67779 does not describe the locations of the points of diversion, however information from the water right file and the map received July 28, 1950 for Water Right Application S-25048/Permit S-19730 indicates that water is diverted with portable pumping plants throughout a reach between the following points:

Points Defining the Authorized Reach for Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
31 S	4 W	WM	28	NE SW	NORTH 11 DEGREES 45 MINUTES WEST, 2350 FEET FROM THE N ¼ CORNER OF SECTION 33
31 S	4 W	WM	33	NW NE	SOUTH 4 DEGREES 30 MINUTES EAST, 1300 FEET FROM THE N ¼ CORNER OF SECTION 33

11. Application T-6875 proposes to add a point of diversion located approximately 40 feet downstream from the lower end of the authorized diversion reach as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
31 S	4 W	WM	33	NW NE	1304 FEET SOUTH AND 91 FEET EAST FROM THE NORTH 1/4 CORNER OF SECTION 33

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

Certificate: 51966 in the name of ROSS M. LENT (perfected under Permit S-27501)
Use: IRRIGATION of 17.9 ACRES
Priority Date: JULY 25, 1961
Rate: 0.185 CUBIC FOOT PER SECOND (CFS)
Limit/Duty: ONE-SEVENTIETH cfs per acre, not to exceed 3.5 acre-feet per acre per year
Source: COW CREEK, tributary to SOUTH UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
31 S	4 W	WM	33	NW SE	280 FEET SOUTH AND 520 FEET EAST FROM THE CENTER OF SECTION 33

Authorized Place of Use:

IRRIGATION					
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**Acres**
31 S	4 W	WM	33	SW NE	13.2
31 S	4 W	WM	33	NW SE	4.7
				TOTAL:	**17.9**

13. Application T-6875 proposes to add a point of diversion located approximately 1700 feet upstream from the authorized point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
31 S	4 W	WM	33	NW NE	1304 FEET SOUTH AND 91 FEET EAST FROM THE NORTH 1/4 CORNER OF SECTION 33

14. The FOURTH right to be transferred in its entirety is as follows:

Certificate: 67780 in the name of NEIL M. THURESSON (perfected under Permit S-27501)
Use: IRRIGATION of 1.4 ACRES
Priority Date: JULY 25, 1961
Rate: 0.01 CUBIC FOOT PER SECOND (CFS)
Limit/Duty: ONE-SEVENTIETH cfs per acre, not to exceed 3.5 acre-feet per acre per year
Source: COW CREEK, tributary to SOUTH UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
31 S	4 W	WM	33	NW NE	970 FEET SOUTH AND 50 FEET EAST FROM THE NORTH 1/4 CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION					
Twp	**Rng**	**Mer**	**Sec**	**Q-Q**	**Acres**
31 S	4 W	WM	33	NW NE	0.2
31 S	4 W	WM	33	NE NW	1.2
				TOTAL:	**1.4**

15. Application T-6875 proposes to add a point of diversion located approximately 400 feet downstream from the authorized point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
31 S	4 W	WM	33	NW NE	1304 FEET SOUTH AND 91 FEET EAST FROM THE NORTH 1/4 CORNER OF SECTION 33

16. Notice of the application for transfer was published on January 20, 1993, pursuant to OAR 690-380-4000. Comments were filed on January 25, 1993, by WaterWatch in response to the notice. The comments focused on the following issues: whether the proposed transfer would injure instream water rights; whether the proposed transfer is compatible with local comprehensive plans; a request to include a condition requiring fish screening and by-pass devices, if necessary; a request to include a condition requiring the applicant to measure and record the amount of water used; and whether any conditions will be included to carry out

and encourage the applicant to eliminate waste and improve the efficiency of water use.These concerns were considered and are addressed in the findings and conditions in this document.

17. The Oregon Department of Fish and Wildlife (ODFW) determined that a fish screening device is necessary at the new point of diversion to prevent fish from entering the diversion. It has been confirmed that the diversion is currently equipped with an appropriate fish screening device.

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

18. Water was used within the five-year period prior to submittal of Transfer Application T-6875 on January 11, 1993, as evidenced by the issuance of confirming water right Certificates 67779 and 67780 on September 8, 1992. On December 13, 2010, an affidavit of use was submitted stating that water was used within the previous five years under Certificates 51964 and 51966. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

19. The proposed change is consistent with Douglas County's land use planning (comprehensive plan), as evidenced by the completed Land Use Information Form submitted March 1, 1993.

20. The proposed change would not result in enlargement of the rights.

21. The proposed downstream point of diversion change under Certificates 51964, 67779 and 67780 would not result in injury to other water rights.

22. The upstream point of diversion change under Certificate 51966 does not occur within or move into any instream water right reach on Cow Creek (Certificates 59910, 59911 and 59912), and occurs above the point (at or near the mouth of Cow Creek) at which flows are measured for instream water right Certificate 59699. Thus, instream water rights would not be injured as a result of the proposed upstream point of diversion change under Certificate 51966.

23. On April 14, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-6875 to the applicant and landowner. The denial was due to application deficiencies; the request to include a permit not subject to transfer; and injury to a junior water right (Certificate 61917). The draft Preliminary Determination set forth a deadline of May 14, 2008, for the applicant and landowner to respond. The applicant and landowner requested additional time to evaluate the draft Preliminary Determination and to resolve the deficiencies and issues.

24. Further review of Transfer Application T-6875 by the Watermaster and other Department staff revealed that the draft Preliminary Determination incorrectly concluded that the proposed transfer would result in injury to a junior water right (Certificate 61917) located between the authorized point of diversion for Certificate 51966 and the proposed upstream point of diversion. Therefore, on August 12, 2008, the Department issued a REVISED draft Preliminary Determination, to correctly reflect that because the intervening junior water right would not be subject to a new call for regulation, it will **not** be injured as a result of the

proposed upstream point of diversion change for Certificate 51966. The revised draft Preliminary Determination proposed denial only on the basis of application deficiencies and the request to include a permit not subject to transfer.

25. On December 13, 2010, the newly-assigned applicant modified the transfer application to remove the permit and lands not under her ownership from the transfer, and submitted an affidavit of evidence of use which resolved the deficiencies in the application.

26. On December 28, 2010, the Department issued a second revised draft preliminary determination, reflecting the modifications and proposing to approve the additional point of diversion. The second revised draft Preliminary Determination cover letter set forth a deadline of January 31, 2011, for the applicant to respond.

27. On January 28, 2011, the Department received a letter from the Oregon Department of Fish and Wildlife stating that the fish screen at the proposed point of diversion has been inspected and it is equipped with a fish screen that meets current fish screening criteria. Fish passage and a fish by-pass device have been determined not to be necessary.

28. On February 7, 2011, the applicant reviewed the draft of the Preliminary Determination and requested that the Department proceed with issuance of a signed Preliminary Determination.

29. On February 8, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-6875 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 February 15, 2011, and in The News-Review newspaper on March 20 and 27 and April 3, 2011, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Conclusions of Law

The additional point of diversion proposed for Certificates 51964, 67779, 51966 and 67780 proposed in Transfer Application T-6875 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The additional point of diversion proposed in application T-6875 is approved.

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 51964, 51966, 67779, 67780 and any related decree.

3. Water right Certificates 51964, 51966, 67779 and 67780 are cancelled. New certificates will be issued describing the portions of Certificates 51964 and 51966 not affected by this transfer.

4. The quantity of water diverted at the additional point of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.

5. 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.

6. When required by the Department, the water user shall install, maintain and operate an in-line flow meter 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.

7. The approved change 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 Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.

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

Dated at Salem, Oregon this 4 day of May, 2011.

Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing date: MAY 05 2011