

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

In the Matter of Transfer Application)
T-11141, Union County)
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PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF
CHANGES IN POINT OF DIVERSION
AND PLACE OF USE, AND PARTIAL
CANCELLATION OF A WATER
RIGHT

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

KURT BOWMAN
67495 HWY 237
LA GRANDE, OR 97850

Findings of Fact

Background

1. On October 12, 2010, Kurt Bowman filed an application to change the point of diversion and place of use for a portion of Certificate 50172. The Department assigned the application number T-11141.
2. On August 23, 2011, the applicant submitted a partial cancellation affidavit and modified the portion of the right to be transferred, to eliminate the contribution from the Gekeler Slough source.
3. On December 14, 2011, the applicant’s agent Gregory Blackman submitted via email a letter from the applicant Kurt Bowman, requesting to modify the transfer application by omitting the lands referred to as Lot 4 of LaGrande Business and Technology Park, totaling 1.02

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

acres, and on December 22, 2011, Gregory Blackman, CWRE, submitted a revised map by email, with hard copy following by postal mail.

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

Certificate: 50172 in the name of the estate of Geo. Gekeler, by C.R. Gekeler (confirmed by Grande Ronde River Decree)

Use: IRRIGATION of 57.82 ACRES

Priority Date: 1883 from the GRANDE RONDE RIVER

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second, 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: GRANDE RONDE RIVER, tributary to the SNAKE RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	38 E	WM	16	NW NE	12.32
3 S	38 E	WM	16	SW NE	38.00
3 S	38 E	WM	16	SE NW	7.50

5. Certificate 50172 does not describe the location of the point of diversion, however information is available from the transfer application and map which indicates that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
2 S	38 E	WM	31	SW SW	GEKELER DITCH: 400 FEET NORTH AND 200 FEET EAST FROM THE SW CORNER OF SECTION 31

6. Transfer Application T-11141 proposes to move the authorized point of diversion approximately 120 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	38 E	WM	31	SW SW	ORODELL DITCH: 1858.33 FEET SOUTH AND 80.84 FEET EAST FROM THE W¼ CORNER OF SECTION 31

7. Application T-11141 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	38 E	WM	34	NE NW	20.32
2 S	38 E	WM	34	NW NW	37.50

8. Certificate 50172 allows use of water from both the Grande Ronde River under priority date 1883 and Gekeler Slough under priority date 1869 for these lands, with a combined duty of 3.0 acre-feet per acre during the irrigation season of each year. The applicant originally proposed to move the Grande Ronde River right to a location where it isn't possible to deliver Gekeler Slough water which would potentially result in an increased demand on Grande Ronde River water resulting in additional regulation of downstream junior water right holders.
9. Notice of the application for transfer was published on October 19, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
10. On July 11, 2011 the Department communicated with the applicant, indicating that it did not appear feasible that the Gekeler Slough water could be transferred to the new place of use and that the applicant must address what to do with the Gekeler Slough portion of the water right. Failure to do so could injure junior water right holders on Grande Ronde River if the full duty of water were to be taken from the Grande Ronde River and applied to the proposed lands.
11. On August 23, 2011, the applicant responded by proposing to cancel the Gekeler Slough source and diminish the duty on the "proposed lands" to 2.0 acre-foot per acre (all from Grande Ronde River), based on the estimation that 1.0 acre-foot of the total 3.0 acre-feet per acre has been supplied from Gekeler Slough.
12. On October 6, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11141 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 7, 2011, for the applicant to respond. The applicant modified the transfer lands as described in Findings of Fact #4 and #7, provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer, and requested that the Department proceed with issuance of a Preliminary Determination.
13. 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 currently equipped with an appropriate fish screening and/or by-pass device.

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

14. Evidence was submitted with the application indicating that water has been used within the last five years according to the terms and conditions of the right. Aerial photographs of the lands to which the right is appurtenant suggest that there has been an extended period of time during which the right was not exercised. However, the information in the record is not sufficient to initiate cancellation proceedings under ORS 540.631.

15. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11141.
16. The proposed change would not result in enlargement of the right provided that the Gekeler Slough source is canceled and the duty on the “to” lands supplied from Grande Ronde River only is diminished to 2.0 acre-feet per acre, (based on the estimation that 1.0 acre-foot per acre of the 3.0 acre-feet total per acre was contributed by the cancelled Gekeler Slough source).
17. The proposed change would not result in injury to other water rights providing that the Gekeler Slough source is canceled and the duty on the “to” lands supplied from Grande Ronde River only is diminished to 2.0 acre-feet per acre, (based on the estimation that 1.0 acre-foot per acre of the 3.0 acre-feet total per acre was contributed by the cancelled Gekeler Slough source).

Partial Cancellation of a Water Right

18. On August 23, 2011, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of that portion of the right, was received from Kurt Bowman, landowner
19. The portion of the right to be cancelled is as follows:
 - Certificate:** 50172 in the name of the estate of Geo. Gekeler, by C.R. Gekeler (confirmed by Grande Ronde River Decree)
 - Use:** IRRIGATION of 58.94 ACRES
 - Priority Date:** 1869 from Gekeler Slough
 - Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second, 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:** Gekeler Slough, tributary to the SNAKE RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	38 E	WM	16	NW NE	13.34
3 S	38 E	WM	16	SW NE	38.10
3 S	38 E	WM	16	SE NW	7.50

20. The appurtenant water right is not located within the boundaries of an irrigation, drainage, water improvement, or water control district, or federal reclamation project;

Determination and Proposed Action

The changes in point of diversion and place of use, and partial cancellation of a water right proposed in Transfer Application T-11141 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the portion of the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the portion of the abandoned right will be cancelled.

If Transfer Application T-11141 is approved, the final order will include the following:

- 1. The changes in point of diversion and place of use, and partial cancellation of a water right proposed in application T-11141 are approved. The portion of the right that has been abandoned is 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 50172 and any related decree.*
- 3. Water right certificate 50172 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.*
- 4. The transferred portion of the right is further limited to an annual duty of 2.0 acre-feet (from Grande Ronde River only) during the irrigation season of each year.*
- 5. The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
- 6. 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 the 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.*
- 7. The water user shall maintain the existing headgate and shall make such improvements as may be required by the Department.*
- 8. The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.*
- 9. The former place of use of the transferred right shall no longer receive water under the right.*

10. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2013**. 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 changes and full beneficial use of the water.*
11. *When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 22 day of December, 2011.


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

This Preliminary Determination was prepared by Carrie Matthews. If you have questions about the information in this document, you may reach me at 541-523-8224 x 36 or Carrie.R.Matthews@wrds.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.