



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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Salem, OR 97301

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August 5, 2013

Applicants		Agents
Robert C. and Sharon E. Richards P.O. Box 536 Union, OR 97883	Douglas W. Kinsley P.O. Box 634 Union, OR 97883	Craig Schellsmidt Union SWCD La Grande, OR 97850 e-mail: unionswcd@hotmail.com
Southern Cross Ltd. Ralph & Debra Eyre P.O. Box 567 Union, OR 97883 e-mail: ralph@ralphreyre.us		Mike Posada Anderson Perry & Assoc Inc. 1901 N. Fir Street La Grande, OR 97850 e-mail: mposada@andersonperry.com

SUBJECT: Water Right Transfer Application T-11548

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department has concluded that approval of the changes in points of diversion proposed in T-11548 would result in injury to instream water right 59537. Consistent with your request that we seek a recommendation from the Department of Fish and Wildlife on whether we should consent to the injury to the instream water right, we are proceeding with that process concurrently with issuance of the preliminary determination.

The Water Resources Department holds instream water rights in trust for the benefit of the people of Oregon. Under ORS 540.530(c), we may approve the transfer only if the agency that requested the instream water right concludes that the changes proposed will result in net benefits to the resources protected by the instream water right, and recommends that we consent to the injury of the right. Please contact the agency staff person to whom the agency review letter has been sent, to discuss whether you may be able to assist in providing information needed for the analysis.

After we have received a recommendation from the Oregon Department of Fish and Wildlife on whether to consent to the injury, provided no protests have been filed, we will issue an order either:

- Approving the transfer with conditions, if any, identified in the agency recommendations as necessary to ensure that the change will result in net benefits, or
- Reaffirming our decision that the instream water right would be injured and denying the transfer.

The timing for issuance of the order will depend on the availability of information needed by ODFW to perform the net benefits analysis upon which their recommendation must be based, and the time necessary to allow public review and comment on the recommendation. You are not authorized to use water from the proposed points of diversion pending a final decision by the Department on your transfer application.

A public notice is being published in the Department's weekly publication and in the La Grande Observer newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the



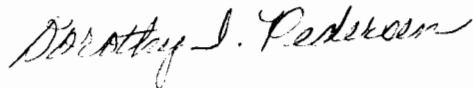
Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at (503) 986-0890 or Dorothy.I.Pedersen@wrд.state.or.us if I may be of assistance.

Sincerely,



Dorothy.I.Pedersen
Transfer Program Advisor

Enclosures

cc: T-11548
Shad Hattan, District 6 Watermaster (*via e-mail*)

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-11548, Union County) PROPOSING DENIAL OF CHANGES
) IN POINTS 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.

Applicants		Agents
Robert C. and Sharon E. Richards PO Box 536 Union, OR 97883 Southern Cross Ltd. Ralph & Debra Eyre P.O. Box 567 Union, OR 97883 e-mail: ralph@ralpheyre.us	Douglas W. Kinsley P.O. Box 634 Union, OR 97883	Craig Schellsmidt Union SWCD La Grande, OR 97850 e-mail: unionswcd@hotmail.com Mike Posada Anderson Perry & Assoc Inc. 1901 N. Fir Street La Grande, OR 97850 e-mail: mposada@andersonperry.com

Findings of Fact

Background

1. On March 14, 2013, Robert C. and Sharon E. Richards, Southern Cross Ltd, and Douglas Kinsley, filed an application to change the points of diversion under Certificates 6271, 6587, and 6602. The Department assigned the application number T-11548.
2. Notice of the application for transfer was published on March 19, 2013, pursuant to OAR 690-380-5050. No comments were filed in response to the notice.
3. On May 31, 2013, the agent requested that the completion date of the transfer be extended until October 1, 2018.

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.

4. On June 18, 2013, the Department sent a copy of the Draft Preliminary Determination proposing to deny Transfer Application T-11548 to the applicants. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
5. On May 31, 2013, the agent for the applicants requested that the Department seek a recommendation from the Oregon Department of Fish and Wildlife as to whether the Department should consent to injury of the instream water right pursuant to OAR 690-380-5050.
6. The first right to be transferred is as follows:

Certificate: 6271 in the name of E. A. FUHER (confirmed by Grande Ronde River Decree)

Use: IRRIGATION of 43.0 ACRES

Priority Date: 1866

Limit/Duty: The amount of water used for irrigation is limited to a diversion of ONE-FORTIETH of one cubic foot per second 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: CATHERINE CREEK, tributary to the GRANDE RONDE RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	40 E	WM	28	SW SE	17.5
4 S	40 E	WM	28	SE SE	2.0
4 S	40 E	WM	33	NE NE	20.0
4 S	40 E	WM	33	NW NE	1.5
4 S	40 E	WM	33	SE NE	2.0
Total Acres:					43.0

7. Certificate 6271 does not describe the location of the point of diversion, however information is available from the adjudication tabulation, transfer application, and transfer application map which indicates the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	40 E	WM	34	SW NW	E.A. FUHER DITCH AKA KINSLEY POD 1: 7250 FEET SOUTH AND 5740 FEET EAST FROM THE NW CORNER OF SECTION 28

8. Transfer Application T-11548 proposes to move the authorized point of diversion approximately 1650 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	40 E	WM	34	NE SW	POD #3 SAMS AND MILES: 8990 FEET SOUTH AND 8000 FEET EAST FROM THE NW CORNER OF SECTION 28

9. The second right to be transferred is as follows:

Certificate: 6587 in the name of A. N. STONEDAHL (confirmed by Grande Ronde River Decree)

Priority Date: 1866 for 10.5 acres in TRACT 1 and 1897 for 25.4 acres in TRACT 2

Limit/Duty: The amount of water used for irrigation is limited to a diversion of ONE-FORTIETH of one cubic foot per second 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: CATHERINE CREEK, tributary to the GRANDE RONDE RIVER

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Priority Date	Tract	Acres
4 S	40 E	WM	28	NE SW	1897	2	20.0
4 S	40 E	WM	28	SE SW	1897	2	5.4
4 S	40 E	WM	28	NW SE	1866	1	3.0
4 S	40 E	WM	28	SW SE	1866	1	7.5
Total Acres:							35.9

10. Certificate 6587 does not describe the location of the point of diversion, however information is available from the adjudication tabulation, transfer application, and transfer application map which indicates the points of diversion are located as follows:

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	TRACT	Measured Distances
4 S	40 E	WM	34	SW NW	1	FUHER DITCH AKA KINSLEY POD 1: 7250 FEET SOUTH AND 5740 FEET EAST FROM THE NW CORNER OF SECTION 28
4 S	40 E	WM	28	SW SE	2	MOSES LORE AKA RICHARDS POD 1: 5080 FEET SOUTH AND 2910 FEET EAST FROM THE NW CORNER OF SECTION 28

11. Transfer Application T-11548 proposes to move the authorized points of diversion approximately one mile upstream from the authorized Moses Lore Diversion and 1650 feet upstream from the authorized E.A. Fuher diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	40 E	WM	34	SE NE	POD #3 SAMS AND MILES: 8000 FEET EAST AND 8990 FEET SOUTH FROM THE NW CORNER OF SECTION 28

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

Certificate: 6602 in the name of W. H. THOMASON (confirmed by Grande Ronde River Decree)
Use: IRRIGATION of 15.5 ACRES
Priority Date: 1897 for TRACT 1
Limit/Duty: The amount of water used for irrigation is limited to a diversion of ONE-FORTIETH of one cubic foot per second 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: CATHERINE CREEK, tributary to the GRANDE RONDE RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	40 E	WM	28	SE NW	3.0
4 S	40 E	WM	28	NE SW	12.5
Total Acres:					15.5

13. Certificate 6602 does not describe the location of the point of diversion, however information is available from the adjudication tabulation, transfer application, and transfer application map which indicates the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	TRACT	Measured Distances
4 S	40 E	WM	28	SW SE	1	MOSES LORE AKA RICHARDS POD 1: 5080 FEET SOUTH AND 2910 FEET EAST FROM THE NW CORNER OF SECTION 28

14. Transfer Application T-11548 proposes to move the authorized points of diversion approximately 1650 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	40 E	WM	34	NE SW	POD #3 SAMS AND MILES: 8990 FEET SOUTH AND 8000 FEET EAST FROM THE NW CORNER OF SECTION 28

15. On June 20, 2013, 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.

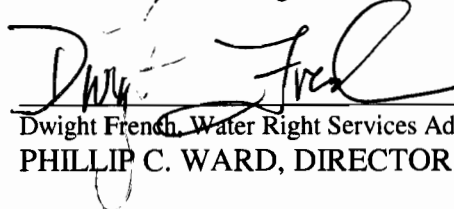
Transfer Review Criteria [OAR 690-380-4010(2)]

16. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
17. 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-11548.
18. The proposed changes would not result in enlargement of the rights.
19. An instream water right, Certificate 59537, exists for the reach of the river in which the authorized points of diversion would be moved upstream, and streamflows within the reach are frequently below the levels allocated under the instream water right. Thus, the instream water right would be injured as a result of the proposed changes in points of diversion.

Determination and Proposed Action

The changes in points of diversion proposed in application T-11548 appears NOT to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. The application will be DENIED unless the Oregon Department of Fish and Wildlife recommends that the Department consent to injury of an instream water right pursuant to OAR 690-380-5050 or protests are filed pursuant to OAR 690-380-4030.

Dated at Salem, Oregon this 1 day of August, 2013.


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 223 or Carrie.R.Matthews@wr.d.state.or.us

Protests should be addressed to the attention of Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.



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August 5, 2013

Ed Bowles, Administrator
Fish Division
Department of Fish and Wildlife
3406 Cherry Ave. NE
Salem, Oregon 97303

REFERENCE: Transfer T-11548

Dear Ed:

The Water Resources Department has determined that approval of water right transfer T-11548 would result in injury to instream water right Certificate 59537 on Catherine Creek, due to reduction of flow within the reach between the authorized POD and the proposed upstream POD, unless the transfer was conditioned so as to avoid or mitigate for injury. The transfer proposes to move the point of diversion on Catherine Creek upstream approximately 1650 feet upstream from the authorized diversion points located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 S	40 E	WM	34	SW NW	E.A. FUHER DITCH AKA KINSLEY POD 1: 7250 FEET SOUTH AND 5740 FEET EAST FROM THE NW CORNER OF SECTION 28
4 S	40 E	WM	28	SW SE	MOSES LORE AKA RICHARDS POD 1: 5080 FEET SOUTH AND 2910 FEET EAST FROM THE NW CORNER OF SECTION 28

Proposed Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	40 E	WM	34	NE SW	POD #3 SAMS AND MILES: 8990 FEET SOUTH AND 8000 FEET EAST FROM THE NW CORNER OF SECTION 28

The Department's streamflow model predicts that natural flow in Catherine Creek is insufficient to meet the requirements the instream right. The "Transfer Comment Form" submitted on June 19, 2013 by ODFW La Grande District Fish Biologist, Timothy D. Bailey, identified that the proposed upstream POD movement on Catherine Creek would result in injury. Based on potential impacts on the instream water right, we issued a Preliminary Determination (enclosed) proposing to deny the transfer unless the Oregon Department of Fish and Wildlife recommends that the Water Resources Department consent to injury of the instream water right as per OAR 690-380-5050.

The applicant has requested that we pursue ODFW's recommendations on whether we should consent to the injury of the instream water right pursuant to ORS 540.530(c).

We hereby request a recommendation on whether we should consent to the injury to the instream water right that would result if water right transfer T-11548 were to be approved. We are enclosing a copy of the transfer application, our Preliminary Determination, and other supporting information to assist you in determining if the project would result in net benefits to the resource and in preparing a recommendation. Please send your recommendation c/o Dorothy Pedersen at the address above. Do not hesitate to contact Dorothy Pedersen at 503-986-0890 or Dorothy.I.Pedersen@wrdd.state.or.us if you have questions or need additional information about the proposed transfer.



Sincerely,



Dwight French
Water Right Services Administrator

enclosures

cc: Transfer applicants: Robert C. and Sharon E. Richards, Southern Cross Ltd, Ralph & Debra Eyre,
Douglas W. Kinsley
Craig Schellsmidt, Union SWCD applicant's agent
Mike Posada, Anderson Perry & Assoc., Inc., applicant's agent
Rick Kepler, Oregon Department of Fish and Wildlife
Tim Bailey, Oregon Department of Fish and Wildlife
Shad Haddan, District 6 Watermaster (*via e-mail*)