

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

In the Matter of Transfer Application            )     FINAL ORDER APPROVING OF A  
T-12673, Douglas County                        )     CHANGE IN POINTS OF DIVERSION

**Authority**

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

JAMES AND THOMAS ROSE  
16117 NORTH BANK RD  
ROSEBURG, OR 97470  
roserranch@gmail.com

**Findings of Fact**

1. On May 18, 2017, JAMES AND THOMAS ROSE filed an application to change the points of diversion under Certificate 26968. The Department assigned the application number T-12673.
2. Notice of the application for transfer was published on May 30, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 8, 2017 the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12673 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of October 9, 2017, for the applicants to respond. The applicants requested the completion date be extended to October 1, 2023 and for 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.

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.

4. On October 25, 2017, the Department issued a Preliminary Determination proposing to approve Transfer T-12673 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 October 17, 2017, and in the Roseburg News Review newspaper on October 24<sup>th</sup> and 31<sup>st</sup> of 2017 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
5. On October 25, 2017, the Department received a revised Watermaster Review, clarifying the type of measuring device required.

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

**Certificate:** 26968 in the name of CARLISLE G. AND MARJORIE S. GILBREATH (perfected under Permit S-24348)  
**Use:** IRRIGATION OF 83.1 ACRES  
**Priority Date:** JULY 19, 1956  
**Rate:** 0.65 CUBIC FOOT PER SECOND  
**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** NORTH UMPQUA RIVER, tributary to the UMPQUA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC
26 S	4 W	WM	14	SE NW	38

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
26 S	4 W	WM	11	SW SW	38	0.3
26 S	4 W	WM	14	NE NW	38	3.2
26 S	4 W	WM	14	NW NW	38	33.6
26 S	4 W	WM	14	SW NW	38	39.0
26 S	4 W	WM	14	SE NW	38	4.4
26 S	4 W	WM	14	NW SW	38	2.6
Total						83.1

7. Transfer Application T-12673 proposes to move the authorized points of diversion for the following lands approximately 1320 feet for POD #2 and 1850 feet for POD #3 downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
26 S	4 W	WM	14	NW SW	38	POD #2 - 2032 FEET WEST AND 269 FEET SOUTH FROM THE CENTER OF SECTION 14
26 S	14 W	WM	14	NW SW	38	POD #3 - 2472 FEET WEST AND 367 FEET SOUTH FROM THE CENTER OF SECTION 14

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	Proposed POD
26 S	4 W	WM	11	SW SW	38	0.3	POD #3
26 S	4 W	WM	14	NE NW	38	3.2	POD #2
26 S	4 W	WM	14	NW NW	38	14.6	POD #2
26 S	4 W	WM	14	NW NW	38	19.0	POD #3
26 S	4 W	WM	14	SW NW	38	16.8	POD #3
26 S	4 W	WM	14	SW NW	38	22.2	POD #2
26 S	4 W	WM	14	SE NW	38	4.4	POD #2
26 S	4 W	WM	14	NW SW	38	2.6	POD #3
						Total	83.1

- The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new points of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. The diversions may be eligible for screening cost-share funds.

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

- Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-12673.
- The proposed change would not result in enlargement of the right.
- The proposed change would not result in injury to other water rights.

**Conclusions of Law**

The change in points of diversion proposed in Transfer Application T-12673 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

- The change in points of diversion proposed in Transfer Application T-12673 is approved.
- 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 26968 and any related decree.
- Water right Certificate 26968 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
- 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. 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 (new and existing).
- 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.

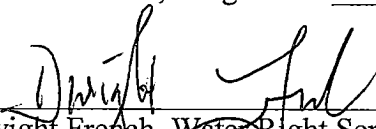
6. Prior to diverting water, the water user shall install an approved fish screen at the new points of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new points of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 4 day of December, 2017.

  
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Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

Mailing date: DEC 08 2017