

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

In the Matter of Transfer Application                    )     FINAL ORDER APPROVING A  
T-11277, Jackson County                                 )     CHANGE IN POINT OF DIVERSION

**Authority**

ORS 540.510 (6) establishes the process in which a water right holder may submit a request to transfer the point of diversion due to government, authorized under an existing water right.

**Applicant**

GEORGE H. AND HENDRIKA NEARY, TRUSTEES  
C/O CLEMENT J. KONG, ESQ.  
2430 J STREET  
SACRAMENTO CA 95816

**Agent**

EVAN MALEPSY  
PUBLIC WORKS MANAGEMENT, INC.  
60 NORTH 4<sup>TH</sup> STREET  
CENTRAL POINT OR 97502

**Findings of Fact**

1. On August 4, 2011, GEORGE H. AND HENDRIKA NEARY, TRUSTEES, filed an application for an additional point of diversion due to government action under Certificate 86997. The Department assigned the application number T-11277.
2. On September 7, 2011, applicant's agent verified the application was a request to change the point of diversion due to government action.
3. The portion of the right to be transferred is as follows:

**Certificate:** 86997 in the name of JOHN DAY (perfected under Permit S-23796)  
**Use:** IRRIGATION of 92.1 ACRES  
**Priority Date:** JULY 28, 1955  
**Rate:** 1.15 CUBIC FEET 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, is limited to a diversion of ONE-EIGHTIETH 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 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** ROGUE RIVER, tributary to the PACIFIC OCEAN

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either 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.

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	2 W	WM	18	SW NE	2350 FEET SOUTH AND 1840 FEET WEST FROM THE NE CORNER OF SECTION 18

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	2 W	WM	17	NE NW	2.9
36 S	2 W	WM	17	NW NW	0.3
36 S	2 W	WM	17	SW NW	8.2
36 S	2 W	WM	17	SE NW	8.4
36 S	2 W	WM	18	NE NE	7.7
36 S	2 W	WM	18	NW NE	2.5
36 S	2 W	WM	18	SW NE	28.9
36 S	2 W	WM	18	SE NE	13.7
36 S	2 W	WM	18	NE NW	2.3
36 S	2 W	WM	18	SE NW	17.1
36 S	2 W	WM	18	NW SE	0.1
Total					92.1

4. Transfer Application T-11277 proposes to move the authorized point of diversion approximately 1600 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	2 W	WM	18	NW SE	1130 FEET SOUTH AND 2510 FEET WEST FROM THE E¼ CORNER OF SECTION 18

5. Notice of the application for transfer was published on August 9, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. Recent government action resulted in the removal of Gold Ray Dam. This action resulted in a change in the surface level from which water is diverted under this right. The change in surface level rendered the authorized point of diversion unusable.
7. 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.

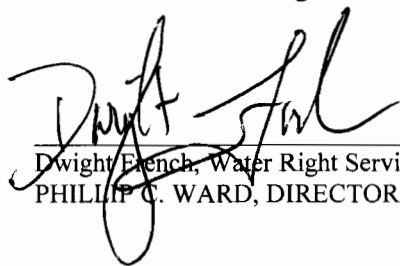
**Conclusions of Law**

The proposed change in point of diversion due to government action in Transfer Application T-11277 is consistent with the requirements of ORS 540.510(6).

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

1. The change in point of diversion due to government action proposed in Transfer Application T-11277 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 Certificate 86997 and any related decree.
3. Water right certificate 86997 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. 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.
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 the point of diversion.
  - b. The water user shall maintain the meter or measuring device in good working order.
  - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
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. 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.

Dated at Salem, Oregon this 14 day of September 2011.



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