

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

In the Matter of Notice of POD) FINAL ORDER APPROVING A CHANGE
Change Due to Government Action) IN POINT OF DIVERSION DUE TO
T-11445, Jackson County) GOVERNMENT ACTION

Authority

ORS 540.510(6) establishes a notification and approval process for changes in point of diversion when government action results in or creates a reasonable expectation of a change in the surface level of a surface water source.

Applicants

GORDON C. AND JUDITH A. ROSE
8908 JOHN DAY DR.
GOLD HILL, OR 97525

Agent

EVAN MALEPSY
60 NORTH FOURTH STREET
CENTRAL POINT, OR 97502

Findings of Fact

Background

1. On July 9, 2012, Gordon C. Rose and Judith D. Rose filed a notification of intent to make a change in point of diversion under Certificates 87642 and 87643 due to government action. The Department assigned the notification number T-11445.
2. A change in location of the point of diversion shared by these water rights is necessitated because the removal of Gold Ray Dam by Jackson County in 2010 drained the former reservoir area known as Kelly's Slough upstream of the dam, where the point of diversion was located. This caused the water level to lower so that it is now impossible to access water at the authorized point of diversion location.
3. The first right included in the notification is as follows:

Certificate: 87642 in the name of GORDON C. AND JUDITH D. ROSE (perfected under Permit S-23796)
Use: IRRIGATION of 60.9 ACRES
Priority Date: JULY 28, 1955
Rate: 0.76 CUBIC FOOT PER SECOND

This is a final order in other than a 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 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.

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

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
36 S	2 W	WM	18	NW NE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	2 W	WM	7	SW SW	0.7
36 S	2 W	WM	18	NE NW	1.4
36 S	2 W	WM	18	NW NW	34.5
36 S	2 W	WM	18	SW NW	7.3
36 S	2 W	WM	18	SE NW	1.1
36 S	3 W	WM	12	SE SE	0.6
36 S	3 W	WM	13	NE NE	15.3

4. Certificate 87642 does not describe the location of the point of diversion by measured distances from a survey corner. Additionally, there is an error in the quarter-quarter designation that first appeared in earlier Certificate 52205. The error was carried through Certificates 57547, 81513 and 87642. Information is available from the Final Proof map for Permit S-23796 and confirmed by the T-11445 map, indicating that the point of diversion is located as follows:

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

5. Notification T-11445 proposes to move the authorized point of diversion approximately 2 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	3 W	WM	12	NE SW	1410 FEET NORTH AND 2710 FEET WEST FROM THE SE CORNER OF SECTION 12

6. The second right included in the notification is as follows:

Certificate: 87643 in the name of GORDON C. AND JUDITH A. ROSE (perfected under Permit S-18531)
Use: IRRIGATION of 30.7 ACRES
Priority Date: OCTOBER 28, 1948
Rate: 0.20 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, 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

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	3 W	WM	18	SW NE	2350 FEET SOUTH AND 1840 FEET WEST FROM NE CORNER, SECTION 18

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	3 W	WM	12	SW SE	2.2
36 S	3 W	WM	12	SE SE	8.4
36 S	3 W	WM	13	NE NE	14.1
36 S	3 W	WM	13	NW NE	6.0

- Certificate 8764 has an error in the Range designation that appeared in earlier Certificate 41771 and was carried through in Certificate 87643. Information is available from the map for Transfer D-141 and confirmed by the T-11445 map, indicating that the point of diversion is located as follows:

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

- Notification T-11445 proposes to move the authorized point of diversion approximately 2 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	3 W	WM	12	NE SW	1410 FEET NORTH AND 2710 FEET WEST FROM THE SE CORNER OF SECTION 12

- Notice of the notification of the intention to change the point of diversion was published on July 17, 2012, pursuant to ORS 540.510(6). No comments were filed in response to the notice.

Review Criteria (ORS 540.510(6))

- The removal of Gold Ray Dam of Jackson County has created a reasonable expectation of a change in the surface level of the Rogue River that impairs access to a point of diversion authorized for Certificates 87642 and 87643.
- The proposed change would not result in injury to other water rights.

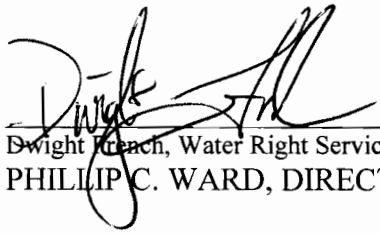
Conclusions of Law

The proposed change in point of diversion due to government action in notification T-11445 is consistent with the requirements of ORS 540.510(6).

Now, therefore, it is ORDERED:

1. The change proposed in T-11445 is approved and effective immediately.
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 87642 and 87643 and any related decree.
3. Water right Certificates 87642 and 87643 are cancelled. Certificates 87746 and 87747 will be issued to describe the change in point of diversion for the rights included in T-11445.
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.

Dated at Salem, Oregon this 28 day of August, 2012.



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

Mailing date: AUG 31 2012