



5. On May 7, 2012, the Department contacted the agent identifying deficiencies on the second application map.
6. On November 20, 2012, the agent submitted a corrected application map.
7. On April 3, 2013, the Department sent a copy of the Draft Preliminary Determination proposing to approve Transfer Application T-11035 to the applicant and agent. The Draft Preliminary Determination cover letter set forth a deadline of May 3, 2013, for the applicant to respond. The agent requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
8. On May 10, 2013, the applicant submitted a revised application to reflect the revisions on the transfer application map and added Certificate 26016 that was missing earlier, resolving the remaining deficiencies that were addressed on March 13, 2012.
9. On July 24, 2013, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11035 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on August 6, 2013, and in the Blue Mountain Eagle newspaper on September 4, 11, and 18, 2013, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

10. The first right to be transferred is as follows:

**Certificate:** 26016 in the name of FRED WOODS (confirmed by John Day River Decree)

**Use:** IRRIGATION OF 9.0 ACRES

**Priority Date:** 1907

**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 ONE-FORTIETH one cubic foot per second per acre irrigated to June 1 and ONE-EIGHTIETH one cubic foot per second per acre thereafter; and shall be further limited to a diversion of not to exceed 1.0 acre-feet per calendar month to June 1 and 4.0 acre feet per acre during season April 1 to Sept. 30 measured at the point of diversion.

**Source:** SLOUGH, tributary to the JOHN DAY RIVER

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	29 E	WM	21	SW SE	9.0

11. Certificate 26016 does not describe the location of the point of diversion, however information is available from the John Day Adjudication Map which indicates that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q
13 S	29 E	WM	28	NE NE

12. Transfer Application T-11035 proposes an additional point of diversion approximately 2310 feet north and 2300 feet west (downstream) to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	29 E	WM	21	SW SE	ADD'L POD #2 - 760 FEET NORTH AND 2160 FEET WEST FROM THE SE CORNER OF SECTION 21

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

**Certificate:** 39354 in the name of CHARLIE L. PAGE (confirmed by John Day River Decree)  
**Use:** IRRIGATION OF 35.0 ACRES  
**Priority Date:** 1885  
**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 cubic foot per second per acre irrigated from April 1 to September 30; further limited to one acre foot per acre per calendar month to July 1 and  $\frac{3}{4}$  acre foot per acre thereafter; total 5.0 acre feet per acre for season, measured at point of diversion.  
**Source:** JOHN DAY RIVER, tributary to the COLUMBIA RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	POD #	Measured Distances
13 S	29 E	WM	21	SE SE	2	730 FEET NORTH AND 620 FEET WEST FROM THE SE CORNER OF SECTION 21
13 S	29 E	WM	27	NW NE	1	50 FEET SOUTH AND 3380 FEET EAST FROM THE NW CORNER OF SECTION 27

**Authorized Place of Use:**

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tract	POD	Acres
13 S	29 E	WM	21	NE SW	1	2	7.0
13 S	29 E	WM	21	NE SW	2	1	18.0
13 S	29 E	WM	21	SE SW	2	1	3.0
13 S	29 E	WM	21	SE SW	1	2	7.0
Total Acres:							35.0

14. Transfer Application T-11035 proposes an additional point of diversion (Proposed POD #1) which is approximately 6630 feet (downstream) and 880 feet north from Authorized POD #1. Proposed POD #1 is approximately 2790 feet west (downstream) and 830 feet north from the Authorized POD #2. The proposed point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	29 E	WM	21	SE SW	ADD'L POD # 1 - 830 FEET NORTH AND 3190 FEET WEST FROM THE SE CORNER OF SECTION 21

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

**Certificate:** 39355 in the name of CHARLES LOWRY (confirmed by John Day River Decree)

**Use:** IRRIGATION OF 32.9 ACRES

**Priority Date:** 1885

**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 cubic foot per second per acre irrigated from April 1 to September 30; further limited to one acre foot per acre per calendar month to July 1 and  $\frac{3}{4}$  acre foot per acre thereafter; total 5.0 acre feet per acre for season, measured at point of diversion.

**Source:** JOHN DAY RIVER, tributary to the COLUMBIA RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Tract	Measured Distances
13 S	29 E	WM	21	SE SE	1	POD #2 - 730 FEET NORTH AND 620 FEET WEST FROM THE SE CORNER OF SECTION 21
13 S	29 E	WM	27	NW NE	2	POD #1 - 50 FEET SOUTH AND 3380 FEET EAST FROM THE NW CORNER OF SECTION 27

**Authorized Place of Use:**

TRACT 1 IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Type of Change	Acres
13 S	29 E	WM	21	NE SW	APOD	8.5
13 S	29 E	WM	21	NW SW	APOD	4.7
13 S	29 E	WM	21	NW SW	APOD/POU	3.8
13 S	29 E	WM	21	SW SW	APOD/POU	0.2
13 S	29 E	WM	21	SW SW	APOD	3.8
13 S	29 E	WM	21	SE SW	APOD	4.0
Total Acres:						25.0

TRACT 2 IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Type of Change	Acres
13 S	29 E	WM	21	NE SW	A_POD	6.5
13 S	29 E	WM	21	NW SW	A_POD	1.4
Total Acres:						7.9

16. Transfer Application T-11035 proposes an additional point of diversion (Proposed POD #1) which is approximately 6630 feet (downstream) and 880 feet north from Authorized POD #1. Proposed POD #1 is approximately 2790 feet west (downstream) and 830 feet north from the Authorized POD #2. The proposed point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	29 E	WM	21	SE SW	ADD'L POD #1 - 830 FEET NORTH AND 3190 FEET WEST FROM THE SE CORNER OF SECTION 21

17. Transfer Application T-11035 also proposes to change the place of use of the 4.0 acres identified above to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	29 E	WM	21	SW SW	1.0
13 S	29 E	WM	21	SE SW	3.0
Total Acres					4.0

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

**Certificate:** 39358 in the name of CHARLIE PAGE (confirmed by John Day River (F) decree)

**Use:** IRRIGATION OF 12.0 ACRES

**Priority Date:** 1885

**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 cubic foot per second per acre irrigated from April 1 to September 30; further limited to one acre foot per acre per calendar month to July 1 and  $\frac{3}{4}$  acre foot per acre thereafter; total 5.0 acre feet per acre for season, measured at point of diversion.

**Source:** JOHN DAY RIVER, tributary to the COLUMBIA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	29 E	WM	27	NW NE	50 FEET SOUTH AND 3380 FEET EAST FROM THE NW CORNER OF SECTION 27

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	29 E	WM	21	SE SE	12.0

19. Transfer Application T-11035 proposes an additional point of diversion (Proposed POD #1) is approximately 3840 feet west (downstream) and 780 feet north from Authorized POD #1. The proposed point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	29 E	WM	21	SE SW	ADD'L POD #1 - 830 FEET NORTH AND 3190 FEET WEST FROM THE SE CORNER OF SECTION 21

20. The fifth right to be transferred is as follows:

**Certificate:** 39359 in the name of CHARLES PAGE (confirmed by John Day River (F) decree)  
**Use:** IRRIGATION OF 82.0 ACRES  
**Priority Date:** 1885  
**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 cubic foot per second per acre irrigated from April 1 to September 30; further limited to one acre foot per acre per calendar month to July 1 and ¾ acre foot per acre thereafter; total 5.0 acre feet per acre for season, measured at point of diversion.  
**Source:** JOHN DAY RIVER, tributary to the COLUMBIA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	29 E	WM	27	NW NE	50 FEET SOUTH AND 3380 FEET EAST FROM THE NW CORNER OF SECTION 27

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	29 E	WM	21	NE SE	27.0
13 S	29 E	WM	21	NW SE	40.0
13 S	29 E	WM	21	SW SE	15.0
TOTAL ACRES:					82.0

21. Transfer Application T-11035 proposes an additional point of diversion (Proposed POD #1) is approximately 3840 feet west (downstream) and 780 feet north from Authorized POD #1. The proposed point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	29 E	WM	21	SE SW	ADD'L POD #1 - 830 FEET NORTH AND 3190 FEET WEST FROM THE SE CORNER OF SECTION 21

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

**Certificate:** 86535 in the name of BLUE MOUNTAIN DITCH CO. (perfected under Permit S-3163)  
**Use:** IRRIGATION OF 9.0 ACRES  
**Priority Date:** OCTOBER 23, 1916  
**Rate:** 0.112 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 1.0 acre foot per acre for each acre irrigated during any month prior to July 1, and thereafter  $\frac{3}{4}$  of one acre foot per acre for each acre irrigated and shall be further limited to a total diversion of not to exceed 5.0 acre-feet per acre irrigated during the irrigation season from April 1 to September 30 of each year.  
**Source:** JOHN DAY RIVER, tributary to the COLUMBIA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	30 E	WM	29	SW NE	BLUE MOUNTAIN DITCH - 565 FEET NORTH AND 2320 FEET WEST FROM THE E $\frac{1}{4}$ CORNER OF SECTION 29

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	29 E	WM	21	SW SE	9.0

23. On May 2, 2013, the applicant requested that the above lands described in Certificate 86535 be diminished to supplemental irrigation.
24. On May 17, 2013, the Department notified the Blue Mountain Ditch Company of the change to this water right which was issued in their name.
25. Transfer Application T-11035 proposes an additional point of diversion approximately 4 miles west (downstream) and  $\frac{1}{2}$  mile north from the authorized point of diversion. The additional point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	29 E	WM	21	SW SE	A_POD #2 - 760 FEET NORTH AND 2160 FEET WEST FROM THE SE CORNER OF SECTION 21

26. 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 diversions and that the diversions are not currently equipped with an appropriate fish screens. These diversions may be eligible for screening cost-share funds.

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

- 27. 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.
- 28. Diversion structures and ditches 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-11035.
- 29. The proposed changes would not result in enlargement of the rights.
- 30. The proposed changes would not result in injury to other water rights

**Partial Cancellation of a Water Right**

- 31. On March 15, 2010, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Thomas Day. The portion of the right to be cancelled is as follows:

**Certificate:** 39355 in the name of CHARLES LOWRY (confirmed by John Day River)  
**Use:** IRRIGATION OF 3.1 ACRES  
**Priority Date:** 1885  
**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 cubic foot per second per acre irrigated from April 1 to September 30; further limited to one acre foot per acre per calendar month to July 1 and ¾ acre foot per acre thereafter; total 5.0 acre feet per acre for season, measured at point of diversion.  
**Source:** JOHN DAY RIVER, tributary to the COLUMBIA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	29 E	WM	27	NW NE	50 FEET SOUTH AND 3380 FEET EAST FROM THE NW CORNER OF SECTION 27

**Authorized Place of Use to be Cancelled:**

Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	29 E	WM	21	NW SW	3.1

**Conclusions of Law**

The additional points of diversion and change in places of use proposed in Transfer Application T-11035 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000, and the abandoned right should be cancelled.



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

1. The additional points of diversion and change in places of use proposed in Transfer Application T-11053 are approved. The portion of the right that has been abandoned is cancelled.
2. The portion of Certificate 86535 described in Finding of Fact No. 22 is diminished to supplemental irrigation.
3. 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 26016, 39354, 39355, 38358, 39359 and 86535 and any related decree.
4. Water right certificates 26016, 39354, 39355, 38358, 39359 and 86535 are cancelled. New certificates will be issued describing the portions of Certificates 39354, 39355, 39358 and 86535 not affected by this transfer and cancellation.
5. The quantity of water diverted at the additional points of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.
6. Water use measurement conditions:
  - a. **Before water use may begin** under this order, the water user shall install a Weir, Parshall Flume, or, with prior approval of the Director, another suitable measuring device, at each new point of diversion.
  - b. The water user shall maintain the measuring devices in good working order.
  - c. The water user shall allow the Watermaster access to the measuring devices; provided however, where the measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
7. Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.
8. Prior to diverting water, the water user shall install an approved fish screen at each point 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 screens at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines a 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.

9. The former place of use of the transferred 4.0 acre portion of the right evidenced by Certificate 39355 shall no longer receive water under the right.
10. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2015**. 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. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 28<sup>th</sup> day of October, 2013.

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

Mailing date: NOV 01 2013