# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Notification of a Point of Diversion Change Due to Government Action T-11277, Jackson County	) ) ) ) )	RECONSIDERATION OF A FINAL ORDER RECORDED IN SPECIAL ORDER VOLUME 85, PAGES 387-389, WITHDRAWING A FINAL ORDER AND ISSUING A SUPERSEDING FINAL ORDER APPROVING A CHANGE IN POINT OF DIVERSION
	)	DUE TO GOVERNMENT ACTION

## **Authority**

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

## Applicant Agent

GEORGE H. AND HENDRIKA NEARY, TRUSTEES C/O CLEMENT J. KONG, ESQ. 2430 J STREET SACRAMENTO CA 95816 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 a notification 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 notification was a request to change the point of diversion due to government action.
- 3. The portion of the right to be changed 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

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.

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	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	
	92.1					

4. Notification 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 change in a point of diversion due to government action was published on August 9, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 6. On September 14, 2011 the Department issued a Final Order for the notification, recorded at Special Order Volume 85, Pages 387 to 389. Shortly following issuance of the order the Department determined that the order should be reconsidered due to inconsistency with the statutory authority for processing changes in point of diversion due to government action. On its own motion, the Department withdrew the order and reconsidered the fish screening and water measurement conditions in the order.
- 7. This order is issued to supersede the previous order recorded at Special Order Volume 85, Pages 387 to 389, and to remove the fish screening and measurement conditions because, upon reconsideration, the Department finds insufficient basis under ORS 510(6) for adding such conditions.

8. 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.

#### **Conclusions of Law**

The proposed change in point of diversion due to government action T-11277 is consistent with the requirements of ORS 540.510(6), and the conditions in Special Order Volume 85, Pages 387-389 should be corrected in the record.

## Now, therefore, it is ORDERED:

- 1. The order recorded at Special Order Volume 85, pages 387-389 is withdrawn, is of no further force or effect, and is superseded by this order.
- 2. The change in point of diversion due to government action proposed in Government Action Point of Diversion Change T-11277 is approved. Certificate 87286 will be issued confirming the new point of diversion for the portion of the right included in this order.
- 3. 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.
- 4. 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.
- 5. Water right certificate 86997 is cancelled. Certificate 87230 has been issued describing that portion of the right not affected by this order.

Dated at Salem, Oregon this \_\_\_\_\_ day of November, 2011.

Dwight French, Water Right Services Administrator, for

PHILLIP C. WARD, DIRECTOR