

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-11072, Jackson County) CHANGE IN POINT OF DIVERSION

Authority

ORS 540.505 to 540.580 establishes 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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicants

GORDON C. ROSE and
JUDITH D. ROSE
8908 JOHN DAY DRIVE
GOLD HILL, OR 97525

Agent

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

Findings of Fact

Background

1. On May 3, 2010, GORDON C. AND JUDITH D. ROSE filed an application for an additional point of diversion under Certificates 81513 and 41771. The Department assigned the application number T-11072.
2. On June 14, 2010, the applicant amended the transfer application requesting to change the point of diversion from a request for an additional point of diversion.
3. The portion of the first right to be transferred is as follows:

Certificate: 81513 in the name of JOHN DAY (perfected under Permit S-23796)
Use: IRRIGATION of 60.9 ACRES
Priority Date: JULY 28, 1955
Rate: 0.76 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

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.

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 81513 incorrectly describes the point of diversion as being within the NWNE of Section 18, T 36 S, R 2 W, W.M. Information available from the Final Proof Survey for Certificate 81513, perfected under Permit S-23796, indicates the point of diversion is more accurately described as:

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. Transfer Application T-11072 proposes to change the point of diversion approximately 1.8 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 portion of the second right to be transferred is as follows:

Certificate: 41771 in the name of JOHN S. AND MARY P. DAY (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.

Period of Use: APRIL 2 TO OCTOBER 31

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	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

7. Transfer Application T-11072 proposes the change the point of diversion approximately 1.8 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

8. Notice of the application for transfer was published on May 11, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. On June 2, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11072 to the applicants and their agent. The draft Preliminary Determination cover letter set forth a deadline of July 8, 2010, for the applicants to respond. The applicants requested that 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.
10. On June 17, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10072 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer was published on the Department's weekly notice on June 22, 2010, and in the Mail Tribune newspaper on June 24, July 1 and 8, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
11. 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.

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

12. 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.
13. A pump, pipeline, and sprinkler system 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-11072.
14. The proposed change would not result in enlargement of the rights.
15. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in point of diversion proposed in Transfer Application T-11072 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

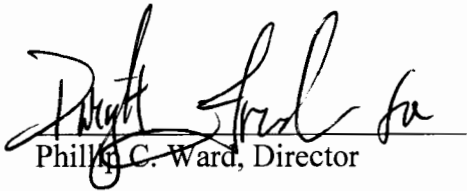
Now, therefore, it is ORDERED:

1. The change in point of diversion proposed in Transfer Application T-11072 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 Certificates 81513 and 41771 and any related decree.
3. Water right certificates 81513 and 41771 are cancelled. New certificates will be issued describing the portions of the rights not affected by this transfer.
4. The quantity of water diverted at the additional point of diversion, together with that diverted at the original 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 new 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. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state'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.

7. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. 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. When satisfactory proof of the completed change is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 10 day of August, 2010.


Phillip C. Ward, Director

Mailing date: AUG 11 2010