

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A
T-9552, Jackson County	)	CHANGE IN POINT OF DIVERSION,
	)	CHANGE IN PLACE OF USE AND
	)	PARTIAL CANCELLATION OF A
	)	WATER RIGHT

**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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicant**

MIKE JOHNSON  
1547 HWY 234  
EAGLE POINT, OR 97524

**Agent**

GARY KAISER  
19440 HWY 62  
EAGLE POINT, OR 97524

**Findings of Fact**

**Background**

1. On September 19, 2003, Mike Johnson filed an application to change the point of diversion under Certificate 72144. The Department assigned the application number T-9552.
2. Certificate 72144 was superseded by Certificate 72485. Certificate 72485 was subsequently superseded by Certificate 83466.
3. On January 4, 2008, the agent submitted a revised map, identifying 1.0 acre for transfer.
4. The portion of the right to be transferred is as follows:  
**Certificate:** 83466 in the name of RALPH D. WORTHYLAKE (perfected under Permit S-298)  
**Use:** IRRIGATION of 1.0 ACRE  
**Priority Date:** JULY 26, 1909  
**Rate:** 0.005 CUBIC FOOT PER SECOND (cfs)

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.

**Limit/Duty:** ONE-EIGHTIETH cfs per acre or its equivalent for each acre irrigated during the irrigation season of each year

**Source:** ROGUE RIVER, tributary to PACIFIC OCEAN

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
35 S	1 W	WM	17	SW SE	3	1220 FEET NORTH AND 3090 FEET EAST FROM THE SW CORNER OF SECTION 17

**Authorized Place of Use:**

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	POD Change	POU Change
35 S	1 W	WM	17	NW SE	4	0.9	0.6	0.3
35 S	1 W	WM	17	SW SE	2	0.1	--	0.1

- Transfer Application T-9552 proposes to move the authorized point of diversion to a point located approximately 60 feet upstream from the authorized point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
35 S	1 W	WM	17	SW SE	3	1280 FEET NORTH AND 3150 FEET EAST FROM THE SW CORNER OF SECTION 17

- Transfer Application T-9552 also proposes to change the place of use for those acres identified in Finding of Fact #4 to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	1 W	WM	17	NW SE	4	0.4

- Notice of the application for transfer was published on October 14, 2003, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On February 4, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9552 to the applicant and the agent. The draft Preliminary Determination, however, inadvertently omitted the request for a change in place of use. On February 11, 2008, the Department mailed a copy of the *revised* draft Preliminary Determination proposing to approve Transfer Application T-9552 to the applicant and his agent. The cover letter that accompanied the *revised* draft Preliminary Determination set forth a deadline of March 11, 2008, for the applicant to respond with comments. The applicant did not submit any comments by the deadline.
- On March 19, 2008, the Department issued a Preliminary Determination proposing to approve Transfer Application T-9552 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on March 25, 2008, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

10. 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)]***

11. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-9552.
13. The proposed change would not result in enlargement of the right.
14. Instream water right Certificates 59816 and 59817 exist for the reach of the river in which the authorized point of diversion would be moved upstream and streamflows within the reach are frequently below the levels allocated under the instream water rights. However, Certificates 59816 and 59817 specifically state that these instream certificates shall not affect the right to appropriate water, from the main stem of the Rogue River, for the irrigation of one acre or less with a priority date earlier than June 19, 1984.
15. Transfer Application T-9552 meets the criteria for exception as outlined in Finding of Fact #14, thus the proposed changes would not result in injury to the instream water rights.

***Partial Cancellation of a Water Right***

16. An affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Mike Johnson on January 4, 2008. The right to be cancelled is as follows:

**Certificate:** 83466 in the name of RALPH D. WORTHYLAKE (perfected under Permit S-298)

**Use:** IRRIGATION of 0.2 ACRE

**Priority Date:** JULY 26, 1909

**Rate:** 0.001 CFS

**Limit/Duty:** ONE-EIGHTIETH cfs per acre or its equivalent for each acre irrigated during the irrigation season of each year

**Source:** ROGUE RIVER, tributary to PACIFIC OCEAN

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
-----	-----	-----	-----	-----	------	--------------------

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
35 S	1 W	WM	17	SW SE	3	1220 FEET NORTH AND 3090 FEET EAST FROM THE SW CORNER OF SECTION 17

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	1 W	WM	17	NW SE	4	0.07
35 S	1 W	WM	17	SW SE	3	0.13

**Conclusions of Law**

The changes in point of diversion and place of use proposed in Transfer Application T-9552 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 changes in point of diversion and place of use proposed in Transfer Application T-9552 are approved. The portion of the right that has been abandoned is cancelled.
2. Water right certificate 83466 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.
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 Certificate 83466 and any related decree.
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. 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.
6. Prior to diverting water, the water user shall install an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the measuring device 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 and operate the measuring device as required by the Department.
7. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2009. A Claim of Beneficial Use prepared by a Certified Water

Rights 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.

8. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 25<sup>th</sup> day of April, 2008.

  
Phillip C. Ward, Director

Mailing date: ~~MAY 01~~ 2008