

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

In the Matter of Transfer Application            )    FINAL ORDER APPROVING A  
T-11065, Klamath County                     )    CHANGE IN POINT OF  
   )    APPROPRIATION

**Authority**

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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.

**Applicant**

DELYLE AND DANIELLE DIAZ OR FRANK AND JULIANA DIAZ  
PO BOX 676  
MERRILL, OR 97633

**Findings of Fact**

**Background**

1. On April 22, 2010, DELYLE AND DANIELLE DIAZ OR FRANK AND JULIANNA DIAZ, filed an application to change the point of appropriation under Certificate 86099. The Department assigned the application number T-11065.
2. The portion of the right to be transferred is as follows:
  - Certificate:** 86099 in the name of LYNN R. POPE AND DELYLE D. DIAZ OR FRANK F. DIAZ (perfected under Permit G-12584)
  - Use:** SUPPLEMENTAL IRRIGATION of 68.2 ACRES
  - Priority Date:** JUNE 22, 1993
  - Rate:** 0.85 CUBIC FOOT PER SECOND, **or its equivalent in case of rotation, measured at the well.**
  - 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
  - Period of Use:** March 1 through September 30

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.
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**Source:** A WELL in the LOST RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	11 E	WM	4	NW NE	KLAM 105606: 650 FEET SOUTH AND 1465 FEET WEST FROM THE NE CORNER OF SECTION 4

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	11 E	WM	33	SE SE	22.3
41 S	11 E	WM	4	NE NE	37.6
41 S	11 E	WM	4	SE NE	8.3

- Transfer Application T-11065 proposes to move the authorized point of appropriation approximately 400 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	11 E	WM	4	NE NE	260 FEET SOUTH AND 1290 FEET WEST FROM THE NE CORNER OF SECTION 4

- The applicants originally proposed to use the full rate of 1.57 cfs currently authorized for Certificate 86099 to irrigate only the portion of the right affected by this transfer.
- Notice of the application for transfer was published on April 27, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On June 14, 2010, the Department mailed to the applicants a copy of the draft Preliminary Determination proposing to deny Transfer Application T-11065 because the proposal to allow 1.57 cfs for the transferred portion of the right would constitute enlargement of the right, which could result in injury to other rights. The draft Preliminary Determination cover letter set forth a deadline of July 16, 2010, for the applicants to respond.
- On June 28, 2010, the applicants agreed to a limit of 0.85 cfs from the proposed well for use on the transferred lands, agreed to install a meter at the new well and acknowledged their option of entering into a rotational use agreement with the holder of the remaining portion of the right, so that each water right holder may use the full 1.57 cfs rate on a rotational basis. The applicants requested that the Department proceed with processing of the transfer and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
- On July 9, 2010, the Department mailed a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-11065 to the applicants. The revised draft Preliminary Determination cover letter set forth a deadline of August 9, 2010, for the applicants to respond. On July 19, 2010, the applicants indicated agreement with the proposed actions and conditions in the revised draft and requested that the Department proceed with issuance of a Preliminary Determination.

9. On July 21, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11065 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on July 27, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

***Transfer Review Criteria (OAR 690-380-4010)***

10. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
11. 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-11065.
12. As conditioned, the proposed change would not result in enlargement of the right.
13. As conditioned, the proposed change would not result in injury to other rights.

**Conclusions of Law**

The change in point of appropriation proposed in Transfer Application T-11065, as conditioned, is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

*If Transfer Application T-11065 is approved, the final order will include the following:*

1. *The change in point of appropriation proposed in Transfer Application T-11065 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 Certificate 86099 and any related decree.*
3. *Water right certificate 86099 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation for the lands included in the transfer.*
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 appropriation.*
  - 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. Water shall be acquired from the same aquifer (water source) as the original point of appropriation, being the predominantly basalt unit that underlies the predominantly basin fill unit. The well shall be constructed to have continuous casing and seal through the basin fill to the predominantly basalt unit.*
- 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, a new certificate confirming the portion of the right transferred will be issued.*

Dated at Salem, Oregon this 27 day of August 2010.

  
Phillip C. Ward, Director

Mailing date:           AUG 31 2010