

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-10996, Wheeler County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN PLACE OF USE

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.

Applicant

DAYSPRING PARTNERS LLC
15350 SW SEQUOIA PARKWAY SUITE 250
PORTLAND OR 97224

Findings of Fact

Background

1. On December 23, 2009, DAYSPRING PARTNERS LLC filed an application to change the place of use under Certificates 25918, 25924, 37255, 83217 and 83219. The Department assigned the application number T-10996.
2. The portion of the first right to be transferred is as follows:

Certificate:	25918 in the name of GEORGE TROSPER (confirmed by John Day River (F) decree)
Use:	IRRIGATION of 7.6 ACRES
Priority Date:	1887
Rate:	1/40 cubic foot per second per acre irrigated to June 1 and 1/80 cubic foot per second per acre thereafter; further limited to one acre-foot per calendar month to June 1 and four acre-feet per acre during season April 1 to Sept. 30, measured at point of diversion.
Source:	HIGH CREEK, tributary to ROCK CREEK

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.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	24 E	WM	11	SE SW	4.6
13 S	24 E	WM	14	NE NW	3.0

3. Certificate 25918 does not describe the location of the point of diversion, however information is available from the transfer application indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	24 E	WM	14	SW NW	2050 FEET SOUTH AND 420 FEET EAST FROM THE NW ¼ CORNER OF SECTION 14.

4. Transfer Application T-10996 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	24 E	WM	11	NE SW	3.4
13 S	24 E	WM	11	NW SW	2.9
13 S	24 E	WM	11	SW SW	0.8
13 S	24 E	WM	11	SE SW	0.5

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

Certificate: 25924 in the name of GEORGE TROSPER (confirmed by John Day River (F) decree)

Use: SUPPLEMENTAL IRRIGATION of 7.6 ACRES

Priority Date: 1899

Rate: 1/40 cubic foot per second per acre irrigated to June 1 and 1/80 cubic foot per second per acre thereafter; further limited to one acre-foot per calendar month to June 1 and four acre-feet per acre during season April 1 to Sept. 30, measured at point of diversion.

Sources: A SPRING AND ROCK CREEK, tributaries to the JOHN DAY RIVER

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	24 E	WM	11	SE SW	4.6
13 S	24 E	WM	14	NE NW	3.0

6. Certificate 25924 does not describe the location of the point of diversion, however information is available from the transfer application indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	24 E	WM	14	SW NW	2050 FEET SOUTH AND 420 FEET EAST FROM THE NW ¼ CORNER OF SECTION 14.

7. Transfer Application T-10996 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	24 E	WM	11	NE SW	3.4
13 S	24 E	WM	11	NW SW	2.9
13 S	24 E	WM	11	SW SW	0.8
13 S	24 E	WM	11	SE SW	0.5

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

Certificate: 37255 in the name of CLINTON O. AND FLORA HARRIS (perfected under Permit S-22983)

Use: SUPPLEMENTAL IRRIGATION of 7.6 ACRES

Priority Date: APRIL 30, 1954

Rate: 0.125 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, shall be limited to ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: ROCK CREEK, tributary to the JOHN DAY RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	24 E	WM	35	SW NE	950 FEET EAST AND 2970 FEET NORTH FROM THE S $\frac{1}{4}$ CORNER OF SECTION 35
12 S	24 E	WM	35	SE SW	50 FEET WEST AND 1090 FEET NORTH FROM THE S $\frac{1}{4}$ CORNER OF SECTION 35
13 S	24 E	WM	2	SE NW	500 FEET WEST AND 2190 FEET SOUTH FROM THE S $\frac{1}{4}$ CORNER OF SECTION 35
13 S	24 E	WM	2	NE SW	150 FEET WEST AND 1700 FEET NORTH FROM THE S $\frac{1}{4}$ CORNER OF SECTION 2
13 S	24 E	WM	11	SE SW	450 FEET WEST AND 560 FEET NORTH FROM THE N $\frac{1}{4}$ CORNER OF SECTION 14
13 S	24 E	WM	14	SW NW	2300 FEET WEST AND 1960 FEET SOUTH FROM THE N $\frac{1}{4}$ CORNER OF SECTION 14
13 S	24 E	WM	15	NE SE	790 FEET WEST AND 2170 FEET NORTH FROM THE SE CORNER OF SECTION 15
13 S	24 E	WM	27	SW NE	1290 FEET EAST AND 1460 FEET SOUTH FROM THE N $\frac{1}{4}$ CORNER OF SECTION 27

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	24 E	WM	11	SE SW	4.6
13 S	24 E	WM	14	NE NW	3.0

9. Transfer Application T-10996 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	24 E	WM	11	NE SW	3.4
13 S	24 E	WM	11	NW SW	2.9
13 S	24 E	WM	11	SW SW	0.8
13 S	24 E	WM	11	SE SW	0.5

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

Certificate: 83217 in the name of CLINTON O. HARRIS (perfected under Permit S-48967)
Use: SUPPLEMENTAL IRRIGATION of 7.6 ACRES
Priority Date: OCTOBER 16, 1984
Rate: 7.6 ACRE FEET STORED WATER ONLY
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 not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year from storage from Frog Pond Reservoir constructed under Permit R-10035, provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation herein.
Source: FROG POND RESERVOIR, tributary to ROCK CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	24 E	WM	16	NE NE	210 FEET SOUTH AND 950 FEET WEST FROM THE NE CORNER OF SECTION 16

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	24 E	WM	11	SE SW	4.6
13 S	24 E	WM	14	NE NW	3.0

11. Transfer Application T-10996 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	24 E	WM	11	NE SW	3.4
13 S	24 E	WM	11	NW SW	2.9
13 S	24 E	WM	11	SW SW	0.8
13 S	24 E	WM	11	SE SW	0.5

12. The portion of the fifth right to be transferred is as follows:

Certificate: 83219 in the name of CLINTON O. AND FLORA H. HARRIS (perfected under Permit S-49763)
Use: SUPPLEMENTAL IRRIGATION of 7.6 ACRES
Priority Date: AUGUST 6, 1986
Rate: 0.063 CUBIC FOOT PER SECOND FROM AN UNNAMED DRAINAGE WAY WHEN AVAILABLE WITH ANY DEFICIENCY IN THE AVAILABLE SUPPLY FROM THE UNNAMED DRAINAGE WAY TO BE MADE UP BY APPROPRIATION OF 11.56 ACRE FEET STORED WATER ONLY FROM BEAVER POND RESERVOIR.
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 not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from the reservoir constructed under Permit R-10786, provided further the right allowed herein shall be limited to any deficiency in the available supply of the prior right existing for the same land and shall not exceed the limitation allowed herein.
Sources: UNNAMED DRAINAGEWAY AND BEAVER POND RESERVOIR, tributaries to the JOHN DAY RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	24 E	WM	15	NE SE	3350 FEET SOUTH AND 3385 FEET WEST FROM THE N¼ CORNER OF SECTION 14
13 S	24 E	WM	27	SW NE	1460 FEET SOUTH AND 1290 FEET EAST FROM THE N¼ CORNER OF SECTION 27

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	24 E	WM	11	SE SW	4.6
13 S	24 E	WM	14	NE NW	3.0

13. Certificate 83219 describes the authorized point of diversion for Beaver Pond Reservoir as follows: NE ¼ SE ¼, Section 15, T. 13 S, R. 24 E, W.M.; 3350 Feet South and 3385 Feet West from the N¼ Corner of Section 14.

- a. The transfer application map depicts the authorized point of diversion for Beaver Pond Reservoir under Certificate 83219 as being as follows: NE ¼ SE ¼, Section 15, T. 13 S, R. 24 E, W.M.; 3350 Feet South and 2250 Feet West from the N¼ Corner of Section 14.
- b. Based on the scale shown on Final Proof Survey Map and the Transfer Application Map, it appears there was a scrivener's error on the Final Proof Survey Map depicting the East-West directional distance from the N¼ corner.

- c. The following table lists the point of diversion for Beaver Pond Reservoir as described in existing certificate 83219 and a proposed re-description based on the above findings:

Original Description of Point of Diversion		Proposed Re-Description of Point of Diversion	
Q-Q	Measured Distance	Q-Q	Measured Distance
NE SE	3350 FEET SOUTH AND 3385 FEET WEST FROM THE N¼ CORNER OF SECTION 14	NE SE	3350 FEET SOUTH AND 2250 FEET WEST FROM THE N¼ CORNER OF SECTION 14
Section 15, Township 13 South, Range 24 East, W.M.			

14. Transfer Application T-10996 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	24 E	WM	11	NE SW	3.4
13 S	24 E	WM	11	NW SW	2.9
13 S	24 E	WM	11	SW SW	0.8
13 S	24 E	WM	11	SE SW	0.5

15. Notice of the application for transfer was published on January 12, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
16. On May 4, 2010, the Department sent a letter to the applicants, stating that based on the information provided and the conveyance of water through a ditch upslope of the lands from which the right was proposed to be transferred and thereby the potential for the “from” lands continuing to receive water, the Department could not find the basis for making an affirmative finding that the proposal would not result in enlargement of the right.
17. On June 16, 2010 the applicants provided information to the department of their intent to pipe the water through the reach past the transferred lands to ensure that those lands do not receive any water.
18. On June 24, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10996 to the applicants. The cover letter for the draft set forth a deadline of July 26, 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.

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

19. Water has been used within the last five years prior to submittal of the transfer application 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.
20. A diversion structure and ditch 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-10996.

21. The lands currently irrigated under the rights could continue to receive water from the same source resulting in enlargement of the rights **if** the “from” lands were not dried up, however a pipe structure is proposed to be installed in the reach past the transferred lands. This appears to be sufficient to ensure that the change would not result in enlargement of the rights.
22. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-10996 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-10996 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-10996 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 25918, 25924, 37255, 83217 and 83219 and any related decree.*
3. *Water right certificates 25918, 25924, 37255, 83217 and 83219 are cancelled. New certificates will be issued describing the portions of these rights not affected by this transfer.*
4. *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 each point of diversion.*
 - b. *The water user shall maintain the meters or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
5. *The former place of use of the transferred rights shall no longer receive water under the rights. The water shall be piped past the reach of the transferred lands to ensure those lands can be dried up.*
6. *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 Rights 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.*

7. *When satisfactory proof of the completed change is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 21 day of July 2010.


Phillip C. Ward, Director

This Preliminary Determination was prepared a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Dorothy Pederson at 503-986-0890 or Dorothy.I.Pederson@wrд.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.