

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-10861, Union County) PROPOSING APPROVAL OF
) ADDITIONAL POINTS 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.

Applicant

MIKE AND JACKIE GULZOW
62133 PIERCE RD.
LAGRANDE, OR 97850-8717

Findings of Fact

Background

1. On April 23, 2009, Mike and Jackie Gulzow filed an application for additional points of diversion under Certificate 27921. The Department assigned the application number T-10861.

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

Certificate: 27921 in the name of Vesta E. Baslee (perfected under Permit S-21885)

Use: IRRIGATION of 86.9 ACRES

Priority Date: NOVEMBER 13, 1952

Rate: 1.09 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-FORTIETH 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.

Source: GRANDE RONDE RIVER, tributary to the SNAKE RIVER

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 Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q
2 S	38 E	WM	36	SE SW
2 S	38 E	WM	36	SE SE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	38 E	WM	36	NW SW	3.0
2 S	38 E	WM	36	SW SW	9.4
2 S	38 E	WM	36	SE SW	10.0
2 S	38 E	WM	36	NE SE	3.0
2 S	38 E	WM	36	SE SE	8.0
2 S	39 E	WM	31	NE SW	17.6
2 S	39 E	WM	31	NW SW	35.9

3. Certificate 27921 does not describe the actual location of the points of diversion; however, information is available from the Certified Water Right Examiner indicating the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	38 E	WM	36	SE SW	POD 1: 809 FEET NORTH AND 1485 FEET EAST FROM THE SW CORNER OF SECTION 36
2 S	38 E	WM	36	SE SE	POD 2: 970 FEET NORTH AND 89 FEET WEST FROM THE SE CORNER OF SECTION 36

4. Transfer Application T-10861 proposes two additional points of diversion. The first additional point of diversion is located upstream approximately 450 feet from POD 1 and upstream approximately ¼ mile from POD 2. The second additional point of diversion is located downstream approximately 1 ¼ mile from POD 1 and downstream approximately 2050 feet from POD 2. The additional points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	38 E	WM	36	SW SW	919 FEET NORTH AND 1028 FEET EAST FROM THE SW CORNER OF SECTION 36
2 S	39 E	WM	31	NE SW	1490 FEET NORTH AND 1961 FEET EAST FROM THE SW CORNER OF SECTION 31

5. Notice of the application for transfer was published on May 5, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On September 2, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10861 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of October 2, 2010, for the applicants to respond. On September 13, 2010, the applicants requested the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

7. 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. The diversions may be eligible for screening cost share funds.

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

8. 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.
9. 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-10861.
10. The proposed change would not result in enlargement of the right.
11. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The additional points of diversion proposed in Transfer Application T-10861 appear 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 application T-10861 is approved, the final order will include the following:

1. *The additional points of diversion proposed in application T-10861 are 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 27921 and any related decree.*
3. *Water right certificate 27921 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 additional points of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points 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 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.

6. *Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new points 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 screens and/or by-pass devices meet 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 devices were installed to the state's criteria. The water user shall maintain and operate the fish screens and/or by-pass devices, as appropriate, at the points of diversion consistent with ODFW's operational and maintenance standards.*
7. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. 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 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 30 day of September 2010.


Dwight French for
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Carrie Jones. If you have questions about the information in this document, you may reach me at 541-523-8224 x 36 or Carrie.R.Jones@wrdd.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.