

exceed 5.0 acre feet per acre for each acre irrigated during the irrigation season from April 1, to September 30, of each year.

Source: JOHN DAY RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
13 S	27 E	WM	6	SE SE

Authorized Place of Use:

IRRIGATION					
Lands described below lie north of the John Day River					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	26 E	WM	1	NE NE	23.2
13 S	26 E	WM	1	NW NE	22.4

3. Certificate 24617 vaguely describes the location of the point of diversion, however more detailed information is available from the application and map which indicates that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
13 S	26 E	WM	6	SE SE	1102	THROOP & SNYDER DITCH: 1450 FEET SOUTH AND 1290 FEET WEST OF THE E¼ CORNER OF SECTION 6

4. Transfer Application T-11081 proposes an additional point of diversion approximately 1½ mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
13 S	26 E	WM	1	NW NE	100	POD #1: 840 FEET SOUTH AND 1900 FEET WEST OF THE NE CORNER OF SECTION 1

5. Notice of the application for transfer was published on June 1, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. Notice of the application for transfer was sent to Oregon Department of Fish and Wildlife on May 28, 2010, June 22, 2010, and July 19, 2010. No comments for additional fish screening and passage information were received.
7. On August 18, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11081 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of September 20, 2010, for the applicants to respond.
8. On August, 23, 2010, the Department received a comment from the Oregon Department of Fish and Wildlife requiring a fish screening and by-pass device prior to the diversion of water.

9. On September 23, 2010, the applicant responded to the draft Preliminary Determination. The applicant provided information that suggested a fish screening and by-pass device was pre-existing. The applicants also provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
10. On October 11, 2010, the Department received information from the Department of Fish and Wildlife that an adequate fish screening and by-pass device existed and that the condition of the requirement to install the fish screening and by-pass device is modified for T-11081.
11. On October 25, 2010, the Department mailed a revised copy of the draft Preliminary Determination with the revised fish screen and by pass requirements. The revised draft Preliminary Determination cover letter set forth a deadline of November 22, 2010, for the applicants to respond.
12. On October 25, 2010, the applicant responded to the revised copy of the draft Preliminary Determination and requested that the Department proceed with issuance of a Preliminary Determination.
13. 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 currently equipped with an appropriate fish screening and/or by-pass device.

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

14. 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.
15. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11081.
16. The proposed change would not result in enlargement of the right.
17. The proposed change would not result in injury to other water rights.

Determination and Proposed Action


The additional point of diversion 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 application T-11081 is approved, the final order will include the following:

1. *The additional point of diversion proposed in application T-11081 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 24617 and any related decree.*
3. *Water right certificate 24617 is cancelled.*
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. *The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.*
6. *The water user shall maintain the existing headgate and shall make such improvements as may be required by the Department.*
7. *The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.*
8. *The approved change 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 change and full beneficial use of the water.*
9. *When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 9 day of November 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.