

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11137, 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 September 29, 2010, DAYSPRING PARTNERS LLC filed an application to change the place of use under Certificates 25670, 25922, 37254, and 86550. The Department assigned the application number T-11137.
2. On November 23, 2010, the Department requested that the applicant provide additional supporting documentation that shows water use on all of the "From" lands, including recent photographs of ditch use.
3. On November 23, 2010, the Department requested that the applicant provide an overview map(s) to show the intent of the transfer, and a revised transfer application, if the revised map(s) resulted in corresponding change(s) to the transfer application.
4. On November 23, 2010, the Department noted that a 0.3 acre discrepancy between "from" and "to" acreages would likely result in the loss of those acres if T-11137 was approved as proposed, and requested clarification from the applicant.
5. On December 16, 2010, the applicant submitted photographs of irrigated areas and irrigation ditches, along with other evidence of use.

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.

6. On December 16, 2010, the applicant submitted an overview map showing the proposed “to” and “remaining right” lands at the Flat Ranch site if T-11137 is approved, and submitted amended transfer maps. The applicant also submitted amendments to the proposed “from” and “to” lands under Certificate 37254. These changes addressed the 0.3 acre discrepancy noted in Finding of Fact #4.
7. On January 6, 2011, the applicant’s agent requested the completion date be extended to October 1, 2013.
8. The portion of the first right to be transferred is as follows:

Certificate: 25670 in the name of PAUL H. OWENS (confirmed by John Day River (F) decree)

Use: IRRIGATION

Priority Date: 1866

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 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 September 30, measured at point of diversion.

Source: ROCK CREEK

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
13 S	25 E	WM	6	NW NE	L2	36.3
13 S	25 E	WM	6	SW NE		14.2
13 S	25 E	WM	6	NE NW	L3	4.0
13 S	25 E	WM	6	SE NW		0.1
13 S	25 E	WM	6	NE SW		15.2
13 S	25 E	WM	6	SE SW		1.0
13 S	25 E	WM	6	NW SE		0.3

9. Certificate 25670 does not describe the location of the point of diversion, however information is available from Transfer Application T-11137 indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

POD	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
C	13 S	24 E	WM	27	SW NE	1,460 FEET SOUTH AND 1,290 FEET EAST FROM THE NORTH ¼ CORNER OF SECTION 27

10. Transfer Application T-11137 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
12 S	24 E	MW	36	NE NE	2300	30.8
12 S	24 E	MW	36	NW NE	2300	2.6
12 S	24 E	MW	36	SW NE	2300	10.6
12 S	24 E	MW	36	SE NE	2300	27.1

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

Certificate: 25922 in the name of GEORGE TROSPER (confirmed by John Day River (F) decree)

Use: IRRIGATION and STORAGE in ROCK CREEK LAKE RESERVOIR

Priority Date: 1899

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 165 acre feet from West Fork Rock Creek for Storage in Rock Creek Lake Reservoir. Rock Creek and Rock Creek Lake: 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 September 30, measured at point of diversion.

Source: ROCK CREEK, WEST FORK ROCK CREEK AND ROCK CREEK LAKE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	24 E	WM	36	SE NE	0.7
12 S	24 E	WM	36	NE SE	1.5
12 S	24 E	WM	36	SW SE	20.6
12 S	24 E	WM	36	SE SE	11.2

12. Certificate 25922 does not describe the location of the points of diversion, however information is available from Transfer Application T-11137 indicating that the points of diversion are located as follows:

Authorized Points of Diversion:

POD	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
A	13 S	24 E	WM	21	SE SE	1,620 FEET SOUTH AND 650 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 21
B	13 S	24 E	WM	22	SW NE	140 FEET NORTH AND 2,740 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 22
C	13 S	24 E	WM	27	SW NE	1,460 FEET SOUTH AND 1,290 FEET EAST FROM THE NORTH ¼ CORNER OF SECTION 27

13. Transfer Application T-11137 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
12 S	24 E	WM	36	NE NE		1.5
12 S	24 E	WM	36	NW NE		14.4
12 S	24 E	WM	36	SW NE		3.0
12 S	24 E	WM	36	SE NE		6.2
12 S	24 E	WM	36	NE SE		7.0
12 S	24 E	WM	36	NW SE		0.4
12 S	25 E	WM	31	NW SW	L3	1.5

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

Certificate: 37254 in the name of CLINTON O. and FLORA H. HARRIS (perfected under Permits S-22984)

Use: SUPPLEMENTAL IRRIGATION of 102.5 ACRES

Priority Date: MAY 3, 1954

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 410.0 acre feet stored water only, measured at the point of diversion from the stream. 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 a diversion of 4 acre feet for each acre irrigated during the irrigation season of each year.

Source: ROCK CREEK LAKE, tributary to the JOHN DAY RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	24 E	WM	22	SW NE	140 FEET NORTH AND 2,740 FEET EAST FROM THE W¼ CORNER OF SECTION 22

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	24 E	WM	25	SE SE	0.2
12 S	24 E	WM	36	NE NE	28.6
12 S	24 E	WM	36	NW NE	0.5
12 S	24 E	WM	36	SW NE	4.6
12 S	24 E	WM	36	SE NE	33.1
12 S	24 E	WM	36	NE SE	6.3
12 S	24 E	WM	36	NW SE	0.4
12 S	24 E	WM	36	SW SE	17.6
12 S	24 E	WM	36	SE SE	11.2

15. Transfer Application T-11137 indicated that the authorized point of diversion is referred to as POD B.

16. Transfer Application T-11137 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
12 S	24 E	WM	36	NE NE		1.5
12 S	24 E	WM	36	NW NE		14.4
12 S	24 E	WM	36	SW NE		0.9
12 S	24 E	WM	36	SE NE		6.0
12 S	24 E	WM	36	NE SE		6.7
12 S	24 E	WM	36	SW SE		20.6
12 S	24 E	WM	36	SE SE		10.8
13 S	24 E	WM	1	NE NE	L1	1.6
13 S	24 E	WM	1	NW NE	L2	6.8
13 S	24 E	WM	1	SW NE		18.8
13 S	24 E	WM	1	SE NE		12.9
12 S	25 E	WM	31	NW SW	L3	1.5

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

Certificate: 86550 in the name of CLINTON O. and FLORA H. HARRIS (perfected under Permit S-22983)

Use: IRRIGATION of 71.5 ACRES and SUPPLEMENTAL IRRIGATION of 31.0 ACRES

Priority Date: APRIL 30, 1954

Rate: 1.68 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, 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 acre-feet per acre for each acre irrigated during the irrigation season of each year, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Source: ROCK CREEK, tributary to the JOHN DAY RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	24 E	WM	27	SW NE	1,460 FEET SOUTH AND 1,290 FEET EAST FROM THE N¼ CORNER OF SECTION 27

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	24 E	WM	25	SE SE	0.2
12 S	24 E	WM	36	NE NE	28.6
12 S	24 E	WM	36	NW NE	0.5
12 S	24 E	WM	36	SW NE	4.6
12 S	24 E	WM	36	SE NE	32.4
12 S	24 E	WM	36	NE SE	4.8
12 S	24 E	WM	36	NW SE	0.4

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	24 E	WM	36	SE NE	0.7
12 S	24 E	WM	36	NE SE	1.5
12 S	24 E	WM	36	SW SE	17.6
12 S	24 E	WM	36	SE SE	11.2

18. Transfer Application T-11137 indicated that the authorized point of diversion is referred to as POD C.

19. Transfer Application T-11137 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
12 S	24 E	WM	36	SW SE		20.6
12 S	24 E	WM	36	SE SE		10.8
13 S	24 E	WM	1	NE NE	L1	1.6
13 S	24 E	WM	1	NW NE	L2	6.8
13 S	24 E	WM	1	SW NE		18.8
13 S	24 E	WM	1	SE NE		12.9

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
12 S	24 E	WM	36	NE NE		1.5
12 S	24 E	WM	36	NW NE		14.4
12 S	24 E	WM	36	SW NE		0.9
12 S	24 E	WM	36	SE NE		6.0
12 S	24 E	WM	36	NE SE		6.7
12 S	25 E	WM	31	NW SW	L3	1.5

20. Notice of the application for transfer was published on October 5, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

21. The proposed changes would result in the routing of return flows around at least one diversion of other existing water rights, resulting in injury to those rights. Rights that are likely to be injured include Certificates 25080, 69338, and 25921.

22. On January 6, 2011, the Department mailed a copy of the draft Preliminary Determination to the applicant proposing to deny Transfer Application T-11137 unless the applicant requested to pursue consent to injury of the affected water rights. The draft Preliminary Determination cover letter set forth a deadline of February 4, 2011, for the applicant to respond.

23. On January 25, 2011, the applicant provided proof of their ownership of the affected water rights and consented to any injury to Certificates 25080, 25921, and 69338 that may result from T-11137.

24. On January 31, 2011, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-1137 to the applicant. The draft Preliminary Determination proposed approval based on consent of the holder of the

potentially injured water rights. The revised draft Preliminary Determination cover letter set forth a deadline of March 25, 2011, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.

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

25. Evidence was submitted with the application and amendments indicating that water has been used within the last five years according to the terms and conditions of the right. Aerial photographs of the lands to which the right is appurtenant suggest that there has been an extended period of time during which the right was not exercised. However, the information in the record is not sufficient to initiate cancellation proceedings under ORS 540.631.
26. 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-11137.
27. The proposed changes would not result in enlargement of the rights.
28. The proposed changes would result in the routing of return flows around at least one diversion of other existing water rights, resulting in injury to those rights. Rights that are likely to be injured include Certificates 25080, 69338, and 25921. The applicant is the owner of the potentially injured rights and has consented to the injury pursuant ORS 540.530. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

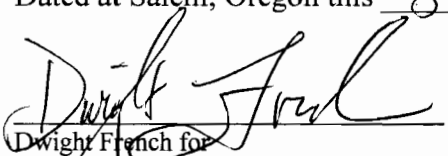
The change in place of use proposed in application T-11137 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-11137 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-11137 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 25670, 25922, 37254, 86550, and any related decree.*
3. *Water right certificates 25670, 25922, 37254, and 86550 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.*
4. *Water use measurement conditions at each point of diversion:*
 - 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. *Water use measurement conditions at reservoir:*
- a. *Before water use may begin under this order, the water user shall install a weir or Parshall flume, or, with prior approval of the Director, other suitable measuring devices, that measure the entire range and stage between empty and full in each reservoir.*
- b. *Before water use may begin under this order, if the reservoir is located in channel, weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, an adjustable outlet valve must be installed. The water user shall maintain such devices in good working order. A written waiver may be obtained, if in the judgment of the Director, the installation of weirs or other suitable measuring devices, or the adjustable outlet valve, will provide no public benefit.*
- c. *The water user shall allow the Watermaster access to the devices; provided however, where any device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate 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 the headgate as required by the Department.*
7. *The former place of use of the transferred rights shall no longer receive water under the rights.*
8. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2013**. 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.*
9. *When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 8 day of February 2011.


Dwight French for
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Kara Morris at 503-986-0898 or Kara.B.Morris@wrд.state.or.us.

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