

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

In the Matter of Transfer Application)
T-10961, Baker County)
)
)
)
)

PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF
CHANGES IN POINTS OF DIVERSION
AND PLACE OF USE AND RE-
DESCRIPTION OF PLACES 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

Wayne and Helen Troy
24242 Old Hwy 30
Baker City, Oregon 97814

Findings of Fact

Background

1. On, October 2, 2009, Wayne and Helen Troy filed an application to change the points of diversion and to change the place of use under Certificates 5961, 6005, 6042 and underlying groundwater permit G-15774. The Department assigned the application number T-10961.
2. The first right to be transferred is as follows:
 - Certificate:** 5961 in the name of Chas. L. Low (confirmed by Burnt River Decree)
 - Use:** IRRIGATION of 96.5 ACRES
 - Priority Date:** 1863 for 45.5 acres, 1864 for 13.0 acres and 1868 for 38.0 acres
 - 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year (with the further limitations contained in Paragraph 64 of said decree.)
 - Source:** ALDER CREEK, tributary to the BURNT RIVER for 1863 and 1868 priority **Note: Part of the lands in the SE¼ SW¼ and SW¼ SE¼, in section 34 (1868 priority) are also irrigated from Hill Creek (1864 priority).

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.

3. Certificate 5961 does not describe the points of diversion, however information is available from the adjudication map for the Burnt River decree which indicates that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Priority	Name
10 S	42 E	WM	33	NE SE	1863	NORTH AKA LOW #2
10 S	42 E	WM	34	NW SW	1868	SOUTH AKA LOW #3
10 S	42 E	WM	34	SW SE	1864	E HILL CR
10 S	42 E	WM	34	SE SW	1864	W HILL CR

Authorized Place of Use (As described in Certificate 5961):

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Priority	POD	Acres
10 S	42 E	WM	34	NE SW	1863	LOW #2	2.5
10 S	42 E	WM	34	NW SW	1863	LOW #2	24.0
10 S	42 E	WM	34	SW SW	1863	LOW #2	3.0
10 S	42 E	WM	34	SE SW	1863	LOW #2	12.0
10 S	42 E	WM	34	SW SE	1863	LOW #2	4.0
TOTAL							45.5
10 S	42 E	WM	34	SE SW	1864	W HILL	6.00
10 S	42 E	WM	34	SW SE	1864	E HILL	7.00
TOTAL							13.0
10 S	42 E	WM	34	NW SW	1868	LOW #3	4.0
10 S	42 E	WM	34	SW SW	1868	LOW #3	3.0
10 S	42 E	WM	34	SE SW	1868	LOW #3	12.0
10 S	42 E	WM	34	SW SE	1868	LOW #3	19.0
TOTAL							38.0

4. Certificate 5961 describes the authorized place of use in the table above. The place of use lies between fixed land features such as a railroad and rock canyons and therefore the location of irrigable land has not changed. Interstate I-84 was constructed through a portion of the authorized place of use. Therefore the portion beneath the freeway is not proposed for transfer.
- a. An overlay was created to project the Public Land Survey subdivisions over the adjudication map for the Burnt River decree. The field shapes of the place of use in the adjudication map were also compared with a 2005 aerial photograph in order to register the place of use with the physical features. The land survey subdivisions shown on the adjudication map were different from our current understanding of how the Public Land Survey lines overlay the land.
 - b. The following table lists a proposed re-description of the place of use for Certificate 5961 to update the water right description consistent with current understanding.

Re-described Place of Use of Certificate 5961							
Twp	Rng	Mer	Sec	Q-Q	Priority	Ditch	Acres
10 S	42 E	WM	34	NE SW	1863	LOW #2	2.5
10 S	42 E	WM	34	NW SW	1863	LOW #2	16.0
10 S	42 E	WM	34	SW SW	1863	LOW #2	6.5
10 S	42 E	WM	34	SE SW	1863	LOW #2	18.0
10 S	42 E	WM	34	SW SE	1863	LOW #2	2.5
TOTAL							45.5
10 S	42 E	WM	34	SE SW	1864	W HILL	9.0
10 S	42 E	WM	34	SW SE	1864	E HILL	4.0
TOTAL							13.0
10 S	42 E	WM	34	SW SW	1868	LOW #3	9.0
10 S	42 E	WM	34	SE SW	1868	LOW #3	10.0
10 S	42 E	WM	34	SW SE	1868	LOW #3	19.0
TOTAL							38.0

5. The following table illustrates the 82.0 acre portion of the right that is proposed to be modified under Certificate 5961 based on the re-description and the type of change that is proposed.

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Priority	Ditch	POU/POD CHANGES	POD CHANGE ONLY
10 S	42 E	WM	34	NE SW	1863	LOW #2	2.0	0.0
10 S	42 E	WM	34	NE SW	1863	LOW #2	0.0	0.5
10 S	42 E	WM	34	NW SW	1863	LOW #2	5.5	0.0
10 S	42 E	WM	34	NW SW	1863	LOW #2	0.0	10.0
10 S	42 E	WM	34	SW SW	1863	LOW #2	3.5	0.0
10 S	42 E	WM	34	SW SW	1863	LOW #2	0.0	3.0
10 S	42 E	WM	34	SE SW	1863	LOW #2	16.5	0.0
10 S	42 E	WM	34	SE SW	1863	LOW #2	0.0	1.5
10 S	42 E	WM	34	SW SE	1863	LOW #2	2.5	0.0
TOTAL							30.0	15.0
10 S	42 E	WM	34	SW SW	1868	LOW #3	0.0	9.0
10 S	42 E	WM	34	SE SW	1868	LOW #3	0.0	10.0
10 S	42 E	WM	34	SW SE	1868	LOW #3	5.4	0.0
10 S	42 E	WM	34	SW SE	1868	LOW #3	0.0	3.6
10 S	42 E	WM	34	SW SE	1868	LOW #3	9.0	0.0
TOTAL							14.4	22.6

6. Transfer Application T-10961 proposes to change the place of use of the above portion of the right and to change the points of diversion to accommodate the place of use change. The authorized point of diversion, (Low #2) is approximately 3 miles downstream from the proposed point of diversion, (Briskey #1) and approximately 660 feet downstream from the proposed POD (Wendt #1). The authorized POD (Low #3) is approximately 2½ miles downstream from the proposed POD (Troy Ditch 2), and approximately 660 feet downstream from the proposed POD (Wendt #2). The location of the proposed points of diversion are as follows:

Twp	Rng	Mer	Sec	Q-Q	Priority	Measured Distance
10 S	42 E	WM	33	SE NW	1868	TROY 2: 1708 FEET SOUTH AND 3271 FEET WEST FROM THE NE CORNER OF SECTION 33
10 S	42 E	WM	34	SW SE	1863	BRISKEY #1: 508 FEET NORTH AND 1850 FEET WEST FROM THE SE CORNER OF SECTION 34
10 S	42 E	WM	33	NE SE	1863	WENDT #1: 1938 FEET NORTH AND 244 FEET WEST FROM THE SE CORNER OF SECTION 33
10 S	42 E	WM	34	NW SW	1868	WENDT #2: 1271 FEET NORTH AND 600 FEET EAST FROM THE SW CORNER OF SECTION 34

7. The proposed place of use and point of diversion changes are as follows:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Priority	POD	POU/POD CHANGES	POD CHANGE ONLY
10 S	42 E	WM	33	NE SE	1863	WENDT #1	0.5	
10 S	42 E	WM	34	NE SW	1863	WENDT #1		0.5
10 S	42 E	WM	34	NW SW	1863	WENDT #1		10.0
10 S	42 E	WM	34	SE SW	1863	WENDT #1		1.5
10 S	42 E	WM	34	SW SW	1863	WENDT #1		3.0
10 S	42 E	WM	34	SE SE	1863	BRISKEY #1	9.0	
10 S	42 E	WM	35	SW SW	1863	BRISKEY #1	9.0	
10 S	42 E	WM	35	SE SW	1863	BRISKEY #1	2.0	
10 S	42 E	WM	35	SE SW	1863	BRISKEY #1	0.2	
11 S	42 E	WM	2	NE NW	1863	BRISKEY #1	9.0	
11 S	42 E	WM	2	NW NE	1863	BRISKEY #1	0.3	
TOTAL							30.0	15.0
10 S	42 E	WM	33	SE NW	1868	TROY 2	7.5	
10 S	42 E	WM	33	SE NW	1868	TROY 2	4.5	
10 S	42 E	WM	33	NE SE	1868	WENDT #2	0.5	
10 S	42 E	WM	33	SE SE	1868	WENDT #2	0.1	
10 S	42 E	WM	34	SE SW	1868	WENDT #2		10.0
10 S	42 E	WM	34	NW SW	1868	WENDT #2	2.0	
10 S	42 E	WM	34	SW SW	1868	WENDT #2		7.8
10 S	42 E	WM	34	SW SE	1868	WENDT #2		3.6
TOTAL							14.6	21.4

8. No changes in place of use or point of diversion are proposed for the following portion of the right as re-described in Finding of Fact #4.

Remaining Right under Certificate 5961								
Twp	Rng	Mer	Sec	Q-Q	Priority	Ditch	Acres	Source
10 S	42 E	WM	34	NW SW	1863	LOW #2	0.5	Alder Cr
10 S	42 E	WM	34	SE SW	1864	W HILL	9.0	Hill Cr
10 S	42 E	WM	34	SW SE	1864	E HILL	4.0	Hill Cr
10 S	42 E	WM	34	SE SW	1868	LOW #3	1.0	Alder Cr
TOTAL							14.5	

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

Certificate: 6005 in the name of Benjamin C. Rizer (confirmed by Burnt River Decree)
Use: IRRIGATION of 71.0 ACRES

Priority Date: MARCH 1877 FOR 57.0 ACRES AND 1909 FOR 14.0 ACRES
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 a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year (with the further limitations contained in Paragraph 64 of said decree.)
Source: ALDER CREEK, tributary to the BURNT RIVER

10. Certificate 6005 does not describe the points of diversion, however information is available from the adjudication map for the Burnt River decree which indicates that the point of diversion is located as follows:

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Priority	Ditch Names
10 S	42 E	WM	35	SE SE	3/1877	RIZOR NORTH AND SOUTH SIDES DITCH (3/1877 PRIORITY)
10 S	42 E	WM	34	SW SE	1909	RIZOR UPPER NORTH SIDE (1909 PRIORITY)

Authorized Place of Use (As described on the Certificate):

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Priority	Acres
10 S	42 E	WM	35	SW SW	3/1877	17.0
10 S	42 E	WM	35	SE SW	3/1877	6.0
11 S	42 E	WM	2	NE NW	3/1877	28.0
11 S	42 E	WM	2	NW NW	3/1877	6.0
10 S	42 E	WM	34	SE SE	1909	14.0
TOTAL						71.0

11. Certificate 6005 describes the authorized place of use in the table above. The place of use lies between fixed land features such as a railroad and rock canyons and therefore the location of irrigable land has not changed. Interstate I-84 was constructed through a portion of the authorized place of use. Therefore the portion beneath the freeway is not proposed for transfer.

- a. An overlay was created to project the Public Land Survey subdivisions over the adjudication map for the Burnt River decree. The field shapes of the place of use in the adjudication map were also compared with a 2005 aerial photograph in order to register the place of use with the physical features. The land survey subdivisions shown on the adjudication map were different from our current understanding of how the Public Land Survey lines overlay the land.
- b. The following table lists the proposed re-description of the place of use based on the above findings as part of transfer application T-10961.

Re-described Place of Use of Certificate 6005					
3/1877 PRIORITY					
Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	42 E	WM	35	SW SW	21.0
10 S	42 E	WM	35	SE SW	6.0
11 S	42 E	WM	2	NE NW	26.0
11 S	42 E	WM	2	NW NW	4.0
Total:					57.0
Re-described Place of Use of Certificate 6005					
1909 PRIORITY					
10 S	42 E	WM	34	SE SE	14.0
Total Acres					71.0

12. Transfer application T-10961 proposes to change the place of use and to change the points of diversion to accommodate the place of use change. The authorized points of diversion, (Rizor North and South Sides) are approximately 1½ miles upstream from the proposed point of diversion (Troy 2) and approximately ½ mile upstream from the proposed POD, (Wendt #3). The location of the proposed points of diversion are as follows:

Twp	Rng	Mer	Sec	Q-Q	Priority	Measured Distance
10 S	42 E	WM	32	NW NE	1909	TROY 1: 740 FEET SOUTH AND 2452 FEET WEST FROM THE NW CORNER OF SECTION 32
10 S	42 E	WM	33	SE NW	3/1877	TROY 2: 1708 FEET SOUTH AND 3271 FEET WEST FROM THE NE CORNER OF SECTION 33
10 S	42 E	WM	34	SE SW	3/1877	WENDT #3: 905 FEET NORTH AND 1673 FEET EAST FROM THE SW CORNER OF SECTION 34

13. The proposed place of use and points of diversion are located as follows:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Priority	POD	Acres
10 S	42 E	WM	33	SE NW	3/1877	TROY 2	6.5
10 S	42 E	WM	33	NE SW	3/1877	TROY 2	3.8
10 S	42 E	WM	33	NE SE	3/1877	TROY 2	18.5
10 S	42 E	WM	33	NW SE	3/1877	TROY 2	18.0
10 S	42 E	WM	34	NE SW	3/1877	WENDT #3	0.5
10 S	42 E	WM	34	SE SW	3/1877	WENDT #3	9.5
10 S	42 E	WM	34	SW SE	3/1877	WENDT #3	0.2
10 S	42 E	WM	32	SW NE	1909	TROY #1	5.5
10 S	42 E	WM	32	SE NE	1909	TROY #1	8.5
TOTAL:							71.0

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

Certificate: 6042 in the name of John Troy (confirmed by Burnt River Decree)
Use: IRRIGATION of 9.0 ACRES (1862 PRIORITY) AND 64.5 ACRES (1864 PRIORITY)

Priority Date: 1862 (TRACT 1), 1864 (TRACT 2)

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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year (with the further limitations contained in Paragraph 64 of said decree.)

Source: STRAW RANCH CREEK FOR TRACT 1 AND ALDER CREEK FOR TRACT 2, tributaries to ALDER CREEK

15. Certificate 6042 does not describe the points of diversion, however information is available from the adjudication map for the Burnt River decree which indicates that the point of diversion is located as follows:

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Priority	Ditch Name
10 S	42 E	WM	32	SE NE	1864	TRACT 2; TROY DITCH
10 S	42 E	WM	33	SE NW	1862	TRACT 1; STRAW RANCH CREEK DITCH

Authorized Place of Use (As Described on the Certificate):

IRRIGATION FOR TRACT 1							
Twp	Rng	Mer	Sec	Q-Q	Priority	POD	Acres
10 S	42 E	WM	33	NE SE	1862	Straw Ranch Cr	5.0
10 S	42 E	WM	33	NW SE	1862	Straw Ranch Cr	4.0
TOTAL:							9.0

IRRIGATION FOR TRACT 2							
Twp	Rng	Mer	Sec	Q-Q	Priority	POD	Acres
10 S	42 E	WM	33	SW NW	1864	Troy	4.0
10 S	42 E	WM	33	SE NW	1864	Troy	16.0
10 S	42 E	WM	33	NE SW	1864	Troy	4.5
10 S	42 E	WM	33	NE SE	1864	Troy	16.0
10 S	42 E	WM	33	NW SE	1864	Troy	24.0
TOTAL:							64.5

16. Certificate 6042 describes the authorized place of use in the table above. The place of use lies between fixed land features such as a railroad and rock canyons and therefore the location of irrigable land has not changed. Interstate I-84 was constructed through a portion of the authorized place of use. Therefore the portion beneath the freeway is not proposed for transfer.
- a. An overlay was created to project the Public Land Survey subdivisions over the adjudication map for the Burnt River decree. The field shapes of the place of use in the adjudication map were also compared with a 2005 aerial photograph in order to register the place of use with the physical features. The land survey subdivisions shown on the adjudication map were different from our current understanding of how the Public Land Survey lines overlay the land.
 - b. The following table lists the proposed re-description of place of use based on the above findings as part of transfer application T-10961.

Re-described Place of Use of Certificate 6042							
Twp	Rng	Mer	Sec	Q-Q	Priority	Ditch	Acres
10 S	42 E	WM	33	NE SE	1862	Straw Ranch Cr	5.0
10 S	42 E	WM	33	NW SE	1862	Straw Ranch Cr	4.0
TOTAL							9.0
10 S	42 E	WM	33	SE NW	1864	Troy	14.5
10 S	42 E	WM	33	SW NW	1864	Troy	4.0
10 S	42 E	WM	33	NE SW	1864	Troy	4.0
10 S	42 E	WM	33	NE SE	1864	Troy	19.0
10 S	42 E	WM	33	NW SE	1864	Troy	23.0
TOTAL							64.5

17. The following table illustrates the portion of the right that is proposed to be modified under Certificate 6042 and the types of change that are proposed.

Twp	Rng	Mer	Sec	Q-Q	Priority	Ditch	POU/POD CHANGES	POD CHANGE ONLY	POU CHANGE ONLY
10 S	42 E	WM	33	NW SE	1862	Straw Ranch Cr			1.5
10 S	42 E	WM	33	SE NW	1864	Troy	2.0	0.5	
10 S	42 E	WM	33	SE NW	1864	Troy	11.0		
10 S	42 E	WM	33	NE SW	1864	Troy	3.3	0.7	
10 S	42 E	WM	33	NE SE	1864	Troy	19.0		
10 S	42 E	WM	33	NW SE	1864	Troy		9.0	
10 S	42 E	WM	33	NW SE	1864	Troy	14.0		
TOTAL							49.3	10.2	1.5

18. Transfer Application T-10961 proposes to change the place of use and to change the points of diversion to accommodate the place of use change. The authorized point of diversion, (Troy) is approximately 1 ¼ miles downstream from the proposed point of diversion, (Briskey #2) and approximately 3300 feet downstream from the proposed POD (Troy 2). The location of the proposed points of diversion are as follows:

Proposed Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Priority	Measured Distance
10 S	42 E	WM	33	SE NW	1864	TROY 2: 1708 FEET SOUTH AND 3271 FEET WEST FROM THE NE CORNER OF SECTION 33
10 S	42 E	WM	34	SW SE	1864	BRISKEY #2: 620 FEET NORTH AND 1347 FEET WEST FROM THE SE CORNER OF SECTION 34

19. The proposed place of use and points of diversion are located as follows:

IRRIGATION									
Twp	Rng	Mer	Sec	Q-Q	Priority	POD	POU/POD CHANGED	POD CHANGED ONLY	POU CHANGED ONLY
10 S	42 E	WM	33	SE NW	1862	Straw Ranch Cr			0.5
10 S	42 E	WM	33	SWNE	1862	Straw Ranch Cr			1.0
11 S	42 E	WM	2	NE NW	1864	BRISKEY #2	16.5		
11 S	42 E	WM	2	NW NW	1864	BRISKEY #2	5.8		
10 S	42 E	WM	34	SE SE	1864	BRISKEY #2	8.5		

IRRIGATION									
Twp	Rng	Mer	Sec	Q-Q	Priority	POD	POU/POD CHANGED	POD CHANGED ONLY	POU CHANGED ONLY
10 S	42 E	WM	35	SE SW	1864	BRISKEY #2	1.0		
10 S	42 E	WM	35	SW SW	1864	BRISKEY #2	17.5		
10 S	42 E	WM	33	SE NW	1864	TROY 2		0.5	
10 S	42 E	WM	33	NE SW	1864	TROY 2		0.7	
10 S	42 E	WM	33	NW SE	1864	TROY 2		9.0	
TOTAL							49.3	10.2	1.5

20. The following portion of the right as re-described in Finding of Fact #16 will not be modified by transfer application T-10961.

Remaining Right for Certificate 6042								
Twp	Rng	Mer	Sec	Q-Q	Priority	Ditch	Acres	
10 S	42 E	WM	33	NE SE	1862	Straw Ranch Cr	5.0	
10 S	42 E	WM	33	NW SE	1862	Straw Ranch Cr	2.5	
10 S	42 E	WM	33	SE NW	1864	Troy	1.0	
10 S	42 E	WM	33	SW NW	1864	Troy	4.0	
TOTAL							12.5	

21. Permit G-15774 is appurtenant to lands being transferred. Pursuant to OAR 690-380-2250, the underlying permit proposed to be transferred is as follows:

Permit: G-15774 in the name of G. Wayne Troy
Use: IRRIGATION of 38.0 ACRES AND SUPPLEMENTAL IRRIGATION of 111.7 ACRES
Priority Date: MAY 23, 2003
Rate: 3.27 CUBIC FEET PER SECOND BEING 0.48 CFS FOR IRRIGATION AND 2.79 CFS FOR SUPPLEMENTAL IRRIGATION
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.
Period of Use: MARCH 1 THROUGH OCTOBER 31 FOR PRIMARY IRRIGATION AND APRIL 1 THROUGH OCTOBER 1 OR SUPPLEMENTAL IRRIGATION
Source: A WELL within the STRAW RANCH CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
10 S	42 E	WM	33	NE NW	300 FEET SOUTH AND 1800 FEET EAST FROM THE NW CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	42 E	WM	33	NE SE	2.1
10 S	42 E	WM	33	NW SE	4.1
10 S	42 E	WM	34	NW SW	1.0
10 S	42 E	WM	34	SE SW	2.1
10 S	42 E	WM	34	SW SE	3.5
10 S	42 E	WM	34	SE SE	10.4
10 S	42 E	WM	35	SW SW	11.3
11 S	42 E	WM	2	NE NW	3.5
TOTAL					38.0

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	42 E	WM	33	SW NE	0.2
10 S	42 E	WM	33	SE NW	1.6
10 S	42 E	WM	33	NE SW	2.0
10 S	42 E	WM	33	NE SE	3.9
10 S	42 E	WM	33	NW SE	19.1
10 S	42 E	WM	34	NE SW	1.4
10 S	42 E	WM	34	NW SW	10.3
10 S	42 E	WM	34	SW SW	6.0
10 S	42 E	WM	34	SE SW	22.4
10 S	42 E	WM	34	SW SE	3.5
10 S	42 E	WM	34	SE SE	5.7
10 S	42 E	WM	35	SW SW	12.2
10 S	42 E	WM	35	SE SW	0.5
11 S	42 E	WM	2	NE NW	17.3
11 S	42 E	WM	2	NW NW	5.6
TOTAL					111.7

22. The applicant proposes to diminish the PRIMARY IRRIGATION portion of the right to SUPPLEMENTAL IRRIGATION and to change the place of use to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	42 E	WM	33	SWNE	1.0
10 S	42 E	WM	33	NESW	0.7
10 S	42 E	WM	33	SESW	0.5
10 S	42 E	WM	33	NESE	0.5
10 S	42 E	WM	33	NESE	8.0
10 S	42 E	WM	33	NWSE	22.3
10 S	42 E	WM	34	NESW	0.5
10 S	42 E	WM	34	NWSW	9.0
10 S	42 E	WM	34	SWSW	10.5
10 S	42 E	WM	34	SESW	9.0
10 S	42 E	WM	34	SESW	10.0
10 S	42 E	WM	34	SWSE	3.6

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	42 E	WM	34	SESE	18.5
10 S	42 E	WM	35	SWSW	24.0
10 S	42 E	WM	35	SESW	1.0
10 S	42 E	WM	2	NWNE	0.3
10 S	42 E	WM	2	NENW	15.5
10 S	42 E	WM	2	NENW	9.0
10 S	42 E	WM	2	NWNW	5.8
TOTAL					149.7

23. Notice of the application for transfer was published on October 20, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
24. On July 9, 2010, the Department mailed a draft copy of the Preliminary Determination proposing to approve Transfer Application T-10961 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of August 9, 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.
25. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new TROY# 2 point of diversion described in Findings of Fact #6, #12, and #18 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. Listed fish species are not present at the point of diversion, the originating water right diversion is not screened, cost-share funds are not currently available, and the proposed diversion may be eligible for ODFW's cost-share program. A grace period of two years is appropriate until such time as cost share funds become available to assist in the construction of a fish screening and/or by-pass device. If cost share funds do not become available, the water user must screen within the indicated time period regardless of the availability of cost share funding.

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

26. Water has been used within the last five years. There is no information in the record that would demonstrate that the portions of the rights proposed for transfer are subject to forfeiture under ORS 540.610.
27. Diversion structures and ditches 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-10961.
28. The proposed changes would not result in enlargement of the rights.

29. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The change in points of diversion and change in place of use proposed in Transfer Application T10961 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the location of the authorized places of use should be re-described. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

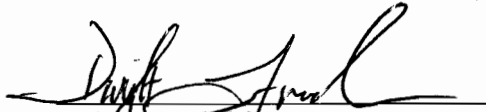
If application T-10961 is approved, the final order will include the following:

- 1. The change in points of diversion and change in place of use proposed in application T-10961 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 Certificates 5961, 6005 and, 6042 and any related decree.*
- 3. Water right Certificates 5961, 6005 and 6042 are canceled. New certificates will be issued describing those portions of the rights not affected by this transfer, based on the re-descriptions in Findings of Fact #8 and #20.*
- 4. The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.*
- 5. The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.*
- 6. When required by the Department, the water user shall install, maintain and operate 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.*
- 7. Within two years after the date of this order, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new TROY#2 point of diversion described in Findings of Fact #6, #12, and #18 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 screen and/or by-pass device meets ODFW's criteria. The water user may withdraw water at the new point of diversion without screening or by-pass devices until two years after the date of this order. 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 device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as*

appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.

8. *The former place of use of the transferred rights shall no longer receive water under the rights.*
9. *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.*
10. *When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 14 day of February 2011.


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@wr.d.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.