

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-11150, Crook County) PROPOSING APPROVAL OF AN
) ADDITIONAL POINT 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

NEAL DOW
28000 SE PAULINA HWY
PRINEVILLE, OR 97754

Agent

STEVEN BRUCE
P.O. BOX 80174
PORTLAND, OR 97280

Findings of Fact

Background

1. On October 29, 2010, Neal Dow filed an application for an additional point of diversion under Certificates 86197 and 86200. The Department assigned the application number T-11150.
2. On May 27, 2011, the agent requested that the completion date be extended to October 1, 2013. The Department agrees to extend the completion period, as shown below.
3. The portion of the first right to be transferred is as follows:
 - Certificate:** 86197 in the name of NEAL AND ANNA DOW (perfected under Permit S-9562)
 - Use:** IRRIGATION of 12.5 ACRES
 - Priority Date:** MARCH 17, 1930
 - Rate:** 0.16 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second per acre. The quantity of water diverted at the new point of diversion shall not exceed the

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.
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quantity of water available at the original points of diversion, located in the NW SE of Section 19 and SE NE of Section 30, T16S, R19E, W.M.

Source: CROOKED RIVER, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
16 S	19 E	WM	30	SE NE	POD #5: 1470 FEET SOUTH AND 1120 FEET WEST FROM THE NE CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	19 E	WM	19	NE SW	0.8
16 S	19 E	WM	19	SE SW	1.0
16 S	19 E	WM	19	NW SE	8.4
16 S	19 E	WM	19	SW SE	2.3

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

Certificate: 86200 in the name of NEAL & ANNA DOW (perfected under Permit S-42025)

Use: IRRIGATION 44.9 ACRES

Priority Date: JANUARY 2, 1976

Rate: 1.13 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water available at the original points of diversion, located in the NE SW of Section 19: 1850 feet north and 2700 feet west from the SE Corner of Section 19; and in the SE NE of Section 30: 2700 feet north and 2200 feet west from the SE Corner of Section 19, T16S, R19E, W.M. This right is limited to any deficiency in the available supply of any prior right existing for the same land.

Source: CROOKED RIVER, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
16 S	19 E	WM	30	SE NE	POD #5: 1470 FEET SOUTH AND 1120 FEET WEST FROM THE NE CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	19 E	WM	19	SE SW	22.6
16 S	19 E	WM	19	SW SE	22.3

5. Transfer Application T-11150 proposes an additional point of diversion to both of the rights described in Findings of Fact #3 and #4 approximately 3520 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
16 S	19 E	WM	19	NW SE	POD #6: 2050 FEET NORTH AND 2490 FEET WEST FROM THE SE CORNER OF SECTION 19

6. Notice of the application for transfer was published on November 9, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On May 31, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11150 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 31, 2011, for the applicant to respond. The applicant requested that 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.
8. 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. This diversion may be eligible for screening cost share funds.

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

9. Water has been used within the last five years. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
10. 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-11150.
11. The proposed change would not result in enlargement of the rights.
12. The proposed change would not result in injury to other water rights.

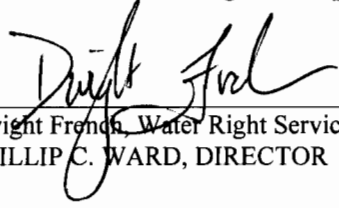
Determination and Proposed Action

The additional point of diversion proposed in Transfer Application T-11150 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-11150 is approved, the final order will include the following:

- 1. The additional point of diversion proposed in application T-11150 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 86197, 86200 and any related decree.*
- 3. Water right certificates 86197 and 86200 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
- 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. 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 meter or measuring devices in good working order.*
 - c. The water user shall allow the Watermaster access to the meter or measuring devices; provided however, where the meter 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 point 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 screen and/or by-pass device meets 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 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.*
- 7. The approved change 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 change and full beneficial use of the water.*
- 8. When satisfactory proof of the completed change is received, new certificates confirming the rights transferred will be issued.*

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



Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

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