

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

In the Matter of Transfer Application)
T-10570, Malheur County)
)
) PRELIMINARY DETERMINATION
) PROPOSING APPROVAL OF A
) CHANGE IN POINT OF DIVERSION,
) AND 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

Wesley and Dianne L. Allison
535 Morgan Avenue
Ontario Or 97914

Agent

Owyhee Ditch Company
280 S. Oregon St
Ontario, OR 97914

Receiving Landowner

Corporation of Presiding Bishop
Church of Jesus Christ of Latter Day Saints
Utah Corporation Sole
50 East North Temple, NRS 12th Floor East
Salt Lake City, Utah 84150

Findings of Fact

Background

1. On March 17, 2008, Wesley and Dianne L. Allison filed an application to change the place of use and point of diversion under Certificate 51154. The Department assigned the application number T-10570.
2. On September 28, 2011, the applicants submitted a revised transfer application map, identifying the proposed place of use acres for transfer T-10570.
3. The right to be transferred is as follows:

Certificate: 51154 in the name of Owyhee Ditch Co. (perfected under Permit S-40841)
Use: IRRIGATION of 5.4 ACRES

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.
--

Priority Date: AUGUST 11, 1976

Rate: 0.09 CUBIC FOOT PER SECOND

Limit/Duty: ONE-SIXTIETH cfs per acre, not to exceed 4.0 acre-feet per acre per year

Source: OWYHEE RIVER, tributary to SNAKE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
21 S	46 E	WM	18	SW NW	2	1900 FEET SOUTH AND 700 FEET EAST FROM THE NW CORNER OF SECTION 18

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
18 S	47 E	WM	31	NW NE	5.4

4. Application T-10570 proposes to move the authorized point of diversion approximately 2920 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
22 S	45 E	WM	7	SW NW	2	48 FEET SOUTH AND 584 FEET EAST FROM THE SE CORNER OF SECTION 7

5. Application T-10570 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Lot	Acres
18 S	47 E	WM	7	SW SE	103	2.4
18 S	47 E	WM	18	NE NE	104	3.0

6. Notice of the application for transfer was published on April 8, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On September 28, 2011, the Department hand delivered a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10570 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of October 28, 2011, 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.
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 according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
10. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Application T-10570.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The changes in place of use and point of diversion proposed in application T-10570 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 application will be approved.

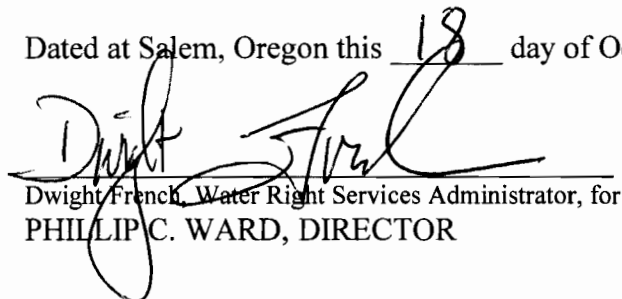
If application T-10570 is approved, the final order will include the following:

1. *The changes in place of use and point of diversion proposed in application T-10570 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 51154 and any related decree.*
3. *Water right certificate 51154 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The receiving landowner will be responsible for completion of the proposed changes.*
5. *The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.*
6. *The former place of use of the transferred right shall no longer receive water under the right.*
7. *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.

8. *When required by the Department, the water user shall install, maintain and operate an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.*
9. *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.*
10. *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 Rights 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.*
11. *When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 18 day of October, 2011.


Dwight French, Water Right Services Administrator, 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@wrds.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.