

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-9532, Josephine County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF DIVERSION
)	AND PARTIAL CANCELLATION OF A
)	WATER RIGHT

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

RIVERSIDE FAMILY FARM
PO BOX 10008
EUGENE OR 97440

Findings of Fact

Background

1. On August 29, 2003, RIVERSIDE FAMILY FARM filed an application to change the point of diversion under Certificate 43598. The Department assigned the application number T-9532.
2. On August 9, 2004, Certificate 43598 was cancelled by Special Order Volume 61, Page 58, approving transfer T-9260. Certificate 80885 was issued for the remaining right portion of the lands and is the water right affected by transfer T-9532.
3. On December 28, 2006, the Certified Water Rights Examiner hired by the applicant submitted a revised map, identifying 20.6 acres for transfer.
4. On March 5, 2007, the applicant submitted an Affidavit for Partial Cancellation of a Water Right Certificate requesting to voluntarily cancel 2.2 acres of irrigation use appurtenant to

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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tax lot 105 and 101, being 1.1 acres in the NE ¼ of the NE ¼, and 1.1 acres in the NW ¼ of the NE ¼, both in Section 20, Township 39 South, Range 8 West, W.M.

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

Certificate: 80885 in the name of A G CROY (confirmed by Illinois River decree)

Use: IRRIGATION of 20.6 ACRES

Priority Date: MAY 1887

Limit/Duty: ONE-FIFTIETH of one cubic foot per second (cfs) per acre during the irrigation season from April 1st to November 1st

Source: EAST FORK ILLINOIS RIVER, tributary to ILLINOIS RIVER

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q
39 S	8 W	WM	27	SE NW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	8 W	WM	20	NE NE	18.3
39 S	8 W	WM	20	NW NE	2.3

6. The rate associated with the acres described in Finding of Fact #5 is 0.412 cfs.
7. Application T-9532 proposes to change the POD approximately 2.5 miles downstream to the Illinois River at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
39 S	8 W	WM	20	NW NE	500 FEET SOUTH AND 250 FEET EAST FROM THE NORTH ¼ CORNER OF SECTION 20

8. Notice of the application for transfer was published on October 14, 2003, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. 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 authorized 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)]

10. Water has been used within the last five years from the authorized source. Since 1999, water may have been diverted from the incorrect point of diversion. However, water has been used in accordance with the other terms and conditions of the water right, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

11. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present through the 1998 irrigation season. Beginning in 1999, a pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present, and have been present within the five-year period prior to submittal of Application T-9532.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

14. On March 5, 2007, David E. Atkin, Trustee for Riverside Family Farms, submitted an affidavit to cancel part of the water right.
15. The portion of the right to be cancelled is as follows:
Certificate: 80885 in the name of A G CROY (confirmed by Illinois River decree)
Use: IRRIGATION of 2.2 ACRES
Priority Date: MAY 31, 1887
Rate: 0.044 CUBIC FOOT PER SECOND
Limit/Duty: ONE-FIFTIETH of one cubic foot per second (cfs) per acre during the irrigation season from April 1st to November 1st
Source: EAST FORK ILLINOIS RIVER, tributary to ILLINOIS RIVER
Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
39 S	8 W	WM	27	SE NW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	8 W	WM	20	NE NE	1.1
39 S	8 W	WM	20	NW NE	1.1

Determination and Proposed Action

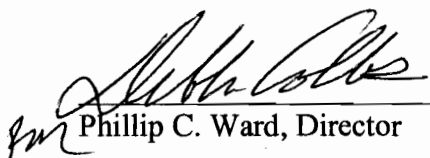
The changes in point of diversion proposed in application T-9532 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned rights should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned rights will be cancelled.

If application T-9532 is approved, the final order will include the following:

1. *The change in point of diversion proposed in application T-9532 is approved. The portion of the right that has been abandoned is cancelled.*
2. *Water right certificate 80885 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.*

3. *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 80885 and any related decree.*
4. *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.*
5. *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.*
6. *Prior to diverting water, the water user shall install 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. The water user shall maintain and operate the measuring device as required by the Department.*
7. *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.*
8. *The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2008. 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.*
9. *When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 3rd day of May 2007.


Phillip C. Ward, Director

This Preliminary Determination was prepared by Bob Rice. If you have questions about the information in this document, you may reach me at 503-986-0885 or Robert.D.Rice@wrdd.state.or.us.