

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

| | | |
|---------------------------------------|---|------------------------------|
| In the Matter of Transfer Application |) | PRELIMINARY DETERMINATION |
| T-9144, Josephine County |) | PROPOSING APPROVAL OF A |
| |) | CHANGE IN 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

PAUL J. JAROMSCAK
3980 HELMS ROAD
GRANTS PASS, OR 97527

Findings of Fact

Background

1. On June 10, 2002, Paul J. Jaromscak filed an application to change the point of diversion under Certificate 55920. The Department assigned the application number T-9144.
2. On November 5, 2007, the applicant's Certified Water Right Examiner submitted a revised map, better describing the amount of acreage subject to transfer and clarified the remaining acreage area under Certificate 55290 not involved in the transfer.
3. The portion of the first right to be transferred is as follows:
Certificate: 55920 in the name of John H. Robinson (confirmed by Rogue River (F) State n Water Board decree)
Use: IRRIGATION of 1.15 ACRES
Priority Date: 1897
Rate: 0.03 CUBIC FOOT PER SECOND
Source: APLEGATE RIVER, tributary to ROGUE RIVER

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.

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|------------|------------|------------|------------|------------|---|
| 37 S | 6 W | WM | 5 | SW SW | JESS DITCH - 780 FEET NORTH AND 800 FEET EAST FROM THE SW CORNER OF SECTION 5 |

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|------------|------------|------------|------------|------------|--------------|
| 37 S | 6 W | WM | 6 | NW NE | 1.15 |

4. Application T-9144 proposes to move the authorized point of diversion approximately 3/4 mile downstream to:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|------------|------------|------------|------------|------------|---|
| 37 S | 6 W | WM | 6 | NW NE | NORTH 71 DEGREES 45 MINUTES 0 SECONDS WEST, 1325 FEET FROM THE NE1/16 CORNER OF SECTION 6 |

5. Transfer application number T-9149 also affects certificate of water right number 55920 and is being processed concurrently.
6. Notice of the application for transfer was published on July 2, 2002, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. 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.
8. On October 18, 2007, the Department mailed to the applicant a copy of the draft Preliminary Determination proposing to approve a change in point of diversion as requested by Transfer Application T-9144. The draft Preliminary Determination set forth a deadline of November 23, 2007, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided an amended map and information necessary to correctly describe the place of use and portion of the right not involved in the transfer.

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 rights, and there is no information in the record that would demonstrate that the rights are 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-9144.
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 change in point of diversion proposed in application T-9144 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 application will be approved.

If application T-9144 is approved, the final order will include the following:

1. *The change in point of diversion proposed in application T-9144 is approved.*
2. *Water right certificate 55920 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and transfer application T-9149.*
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 55920 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. *The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife'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. *The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2009. 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.*
8. *When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 13 day of December 2007.


for Phillip C. Ward, Director

This Preliminary Determination was prepared by Susan Douthit. If you have questions about the information in this document, you may reach me at 503-986-0858 or Susan.M.Douthit@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.