



**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	29 E	WM	26	NE NW	0.5
13 S	29 E	WM	26	SW NW	22.0
13 S	29 E	WM	26	SE NW	16.4
13 S	29 E	WM	27	SW NE	2.2
13 S	29 E	WM	27	SE NE	26.4
<b>TOTAL:</b>					<b>67.5</b>

- Application T-10072 proposes to change the point of diversion for the above described lands upstream approximately 3/4 mile to a point located as follows:

**Proposed Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
13 S	29 E	WM	23	SE SE	710 feet North and 200 feet West from the NE corner of Section 26

- Notice of the application for transfer was published on January 31, 2006, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
- 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 currently equipped with an appropriate fish screening and/or by-pass device.
- On August 3, 2006, the Department received a letter from Gary Wilson, District Engineer of the Grant Soil and Water Conservation District, indicating that the transfer was submitted as a result of a conservation project to replace a gravel push-up dam in the river with a permanent "Fish Friendly" Lay-Flat structure. In resolving the fish passage problems, the Water Conservation District became aware of the water right of record as it relates to the point of diversion that is authorized and certificated.

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

- The applicant submitted evidence that water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
- A diversion structure, pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present within the five-year period prior to submittal of Application T-10072.
- The proposed change would not result in enlargement of the right.

10. The reach of the river between the existing authorized point of diversion and the proposed point of diversion is within a reach of the John Day River described in instream water right Certificates 66609, 59787 and 59798. Streamflows within the reach are frequently below the levels allocated under instream water right Certificate 59787, which is deficient annually during the irrigation season. Instream water right Certificates 66609 and 59798 are sometimes, but rarely deficient during the irrigation season in a normal water year. Additionally, the proposed upstream point of diversion change under this transfer will further reduce flows in the reach. Based upon this review of the data, the Department determined that only instream water right Certificate 59787 would be injured as a result of the proposed change in point of diversion.
11. The Department also identified two existing water rights, other than the instream water rights described in Finding #10 above, that have diversion points within the reach of the John Day River to be affected by this transfer. The Watermaster, however, made a statement that there is not a potential for injury to these water rights.
12. On October 30, 2007, the Department mailed to the applicant a copy of the draft Preliminary Determination proposing to deny Transfer Application T-10072 because of the injury to instream water right Certificate 59787. The draft Preliminary Determination set forth a deadline of November 29, 2007, for the applicant to respond.
13. On November 19, 2007, the applicant requested that the Department seek a recommendation from ODFW as to whether the Department should consent to injury of the instream water right pursuant to OAR 690-380-4030, and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

#### **Determination and Proposed Action**

The change in point of diversion proposed in application T-10072 cannot be made without injury to existing instream water right Certificate 59787. Thus, the application appears **NOT** to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. Pursuant to ORS 540.530, the application will be denied unless the Oregon Department of Fish and Wildlife recommends that the Department consent to injury of instream water right, pursuant to OAR 690-380-5050, or protests are filed pursuant to OAR 690-380-4030.

Dated at Salem, Oregon this 20 day of December 2007.

  
Phillip C. Ward, Director

*Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.*

This Preliminary Determination was prepared by Ken Dowden. If you have any questions about the information in this preliminary determination, you may reach me at (541)278-5456 or e-mail at [Ken.D.DOWDEN@ wrd.state.or.us](mailto:Ken.D.DOWDEN@ wrd.state.or.us)