

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-11072, Jackson 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.

Applicants

GORDON C. ROSE and
JUDITH D. ROSE
8908 JOHN DAY DRIVE
GOLD HILL, OR 97525

Agent

EVAN MALEPSY
PUBLIC WORKS MANAGEMENT, INC.
60 NORTH 4TH STREET
CENTRAL POINT, OR 97502

Findings of Fact

Background

1. On May 3, 2010, GORDON C. AND JUDITH D. ROSE filed an application for an additional point of diversion under Certificates 81513 and 41771. The Department assigned the application number T-11072.
2. On June 14, 2010, the applicant amended the transfer application requesting to change the point of diversion from a request for an additional point of diversion.
3. The portion of the first right to be transferred is as follows:
 - Certificate:** 81513 in the name of JOHN DAY (perfected under Permit S-23796)
 - Use:** IRRIGATION of 60.9 ACRES
 - Priority Date:** JULY 28, 1955
 - Rate:** 0.76 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, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not 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.

exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: ROGUE RIVER, tributary to the PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
36 S	2 W	WM	18	NW NE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	2 W	WM	7	SW SW	0.7
36 S	2 W	WM	18	NE NW	1.4
36 S	2 W	WM	18	NW NW	34.5
36 S	2 W	WM	18	SW NW	7.3
36 S	2 W	WM	18	SE NW	1.1
36 S	3 W	WM	12	SE SE	0.6
36 S	3 W	WM	13	NE NE	15.3

4. Certificate 81513 incorrectly describes the point of diversion as being within the NWNE of Section 18, T 36 S, R 2 W, W.M. Information available from the Final Proof Survey for Certificate 81513, perfected under Permit S-23796, indicates the point of diversion is more accurately described as:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	2 W	WM	18	SW NE	2350 FEET SOUTH AND 1840 FEET WEST FROM THE NE CORNER OF SECTION 18

5. Transfer Application T-11072 proposes to change the point of diversion approximately 1.8 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	3 W	WM	12	NE SW	1410 FEET NORTH AND 2710 FEET WEST FROM THE SE CORNER OF SECTION 12

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

Certificate: 41771 in the name of JOHN S. AND MARY P. DAY (perfected under Permit S-18531)

Use: IRRIGATION of 30.7 ACRES

Priority Date: OCTOBER 28, 1948

Rate: 0.20 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, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Period of Use: APRIL 2 TO OCTOBER 31

Source: ROGUE RIVER, tributary to the PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	2 W	WM	18	SW NE	2350 FEET SOUTH AND 1840 FEET WEST FROM THE NE CORNER OF SECTION 18

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	3 W	WM	12	SW SE	2.2
36 S	3 W	WM	12	SE SE	8.4
36 S	3 W	WM	13	NE NE	14.1
36 S	3 W	WM	13	NW NE	6.0

7. Transfer Application T-11072 proposes the change the point of diversion approximately 1.8 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	3 W	WM	12	NE SW	1410 FEET NORTH AND 2710 FEET WEST FROM THE SE CORNER OF SECTION 12

8. Notice of the application for transfer was published on May 11, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. On June 2, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11072 to the applicants and their agent. The draft Preliminary Determination cover letter set forth a deadline of July 8, 2010, 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.
10. 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)]

11. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
12. 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-11072.
13. The proposed change would not result in enlargement of the rights.

14. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in point of diversion proposed in Transfer Application T-11072 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.

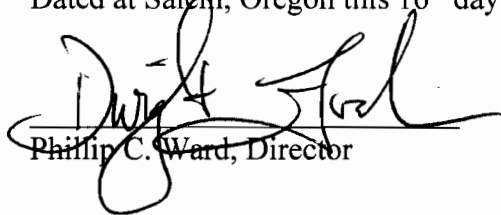
If Transfer Application T-11072 is approved, the final order will include the following:

1. *The change in point of diversion proposed in Transfer Application T-11072 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 81513 and 41771 and any related decree.*
3. *Water right certificates 81513 and 41771 are cancelled. New certificates will be issued describing that portion 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 the new point of diversion.*
 - b. *The water user shall maintain the meter or measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is 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, 2011**. 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 16th day of June, 2010.


Phillip C. Ward, Director

This Preliminary Determination was prepared by Teri Hranac. If you have questions about the information in this document, you may reach me at 503-986-0881 or Teri.K.Hranac@ wrd.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.