

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

In the Matter of Transfer Application)	ORDER WITHDRAWING
T-11215, Douglas County)	PRELIMINARY DETERMINATION
)	PROPOSING APPROVAL OF
)	CHANGES IN POINTS OF
)	DIVERSION, PLACES OF USE, AND
)	CHARACTER 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

KURT M. AND VERONICA SPENCER
6459 OAK HILL ROAD
ROSEBURG, OR 97470

Findings of Fact

Background

1. On March 23, 2011, Kurt M. and Veronica Spencer filed an application to change the points of diversion, to change the place of use, and to change the character of use under Certificates 27632, 43957, 49003, 79303, 85765, and 85724. The Department assigned the application number T-11215.
2. On March 26, 2011, the applicants amended the application to clarify the proposed place of use under Certificate 79303.
3. Notice of the application for transfer was published on March 29, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On June 16, 2011, the Department mailed to the applicants a copy of the draft Preliminary Determination proposing to deny transfer application T-11215, unless the Oregon Department of Fish and Wildlife (ODFW) recommends the Department consent to injury of an instream water right or, the applicant agrees to condition the right to prevent injury, or the applicants withdraw that portion of the transfer application causing injury. The draft

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

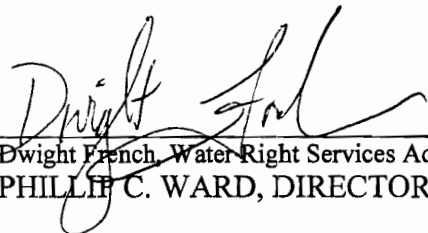
Preliminary Determination cover letter set forth a deadline of July 18, 2011, for the applicants to respond.

5. On July 11, 2011, the applicants agreed to condition the right to prevent injury with the following language: "the proposed domestic expanded and stock uses proposed for Certificate 85724 will not be exempted from regulation for existing instream water rights (Certificates 59698 and 59901)".
6. On July 27, 2011, the Department issued a Preliminary Determination proposing to approve transfer application T-11215 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on August 2, 2011, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
7. On August 17, 2011, the applicants' agent contacted the Department and verbally informed the Department that they did not agree with the flow metering conditions. He further informed the Department that the conditions were not on the draft Preliminary Determination because it was for a denial unless the applicants agreed to condition the right to avoid injury. Therefore, the applicants were not given an opportunity to review the conditions. The applicants' agent also indicated that the applicants wanted to modify their transfer application.
8. On August 25, 2011, the Department received a letter from the applicants requesting the Preliminary Determination be withdrawn so they could consult with the Watermaster and amend their application.

Now, therefore, it is ORDERED:

The Preliminary Determination issued on July 27, 2011, is withdrawn and is of no force or effect.

Dated at Salem, Oregon this 25 day of August 2011.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR