

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

In the Matter of Transfer Application            )     FINAL ORDER APPROVING A  
T-11919, Klamath County                        )     CHANGE IN POINT OF DIVERSION  
  )  
  )  
  )

**Authority**

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

**Applicant**

ALLEN MAXFIELD  
329 ISLAND AVENUE  
NEWPORT BEACH, CA 92661

**Findings of Fact**

1. On November 5, 2014, ALLEN MAXFIELD filed an application to change the point of diversion under Certificate 65750. The Department assigned the application number T-11919.
2. Notice of the application for transfer was published on November 11, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 5, 2014, Transfer Application T-11917, T-11918, and T-11920 were filed. This transfer modifies the same right proposed in T-11917, T-11918, and T-11920. Certificate 65750 shall be canceled after all four applications are processed.
4. On January 20, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11919 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of February 19, 2015, for the applicants to respond.

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.

5. On January 29, 2015, the applicant provided ownership information for the area affected by T-11919. The Department determined that consent to transfer was required, from an additional landowner, before a preliminary determination could be issued. The deficiency letter set forth a deadline of April 13, 2015, for the applicant to respond.
6. On February 17, 2015, the applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer, and requested that the Department proceed with issuance of a Preliminary Determination.
7. On March 10, 2015, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11919 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on March 17, 2015, and in the Klamath Falls Herald and News newspaper on March 17 and 24, 2015, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
8. The portion of the right to be transferred is as follows:

**Certificate:** 65750 in the name of PETER M. BOURDET (perfected under Permit S-23654)  
**Use:** IRRIGATING 4.5 ACRES  
**Priority Date:** JUNE 30, 1955  
**Rate:** 0.11 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-FORTIETH of one cubic foot per second (or its equivalent) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.  
**Source:** WILLIAMSON RIVER, tributary to the UPPER KLAMATH LAKE

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
34 S	7 E	WM	22	SE NW	4	3930 FEET NORTH AND 2120 FEET EAST FROM THE NW CORNER OF SECTION 27

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
34 S	7 E	WM	22	SW SE	8	4.3
34 S	7 E	WM	22	SE SE		0.2

9. Transfer Application T-11919 proposes to move the authorized point of diversion approximately 0.77 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
34 S	7 E	WM	22	SW SE	8	2380 FEET SOUTH AND 740 FEET EAST FROM THE CENTER ¼ CORNER OF SECTION 22

10. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. 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 right. There is no information in the record that would demonstrate that the right is 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 right was present within the five-year period prior to submittal of Transfer Application T-11919.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

**Conclusion of Law**

The change in point of diversion proposed in Transfer Application T-11919 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The change in point of diversion proposed in Transfer Application T-11919 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 Certificate 65750 and any related decree.
3. Water right certificate 65750 is modified and will be canceled upon approval or denial of T-11917, T-11918, and T-11920. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. The quantity of water diverted at the new 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 each 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 an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. 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. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 27 day of May, 2015.



Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

Mailing date: MAY 29 2015