

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-10814, Marion County	)	PROPOSING APPROVAL OF A
	)	CHANGE FROM A SURFACE WATER
	)	POINT OF DIVERSION TO A
	)	GROUNDWATER POINT OF
	)	APPROPRIATION

**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**

JON C. AND KAREN S. TUCKER  
PO BOX 615  
STAYTON, OR 97383

**Agent**

LELAND A. HARDY  
690 LORING DR NW  
SALEM, OR 97304

**Findings of Fact**

**Background**

1. On March 13, 2009, JON C. AND KAREN S. TUCKER filed an application to change a surface water point of diversion to a groundwater point of appropriation under Certificate 23864. The Department assigned the application number T-10814.
2. The right to be transferred is as follows:
  - Certificate:** 23864 in the name of C. L. AND ANNA E STANLEY, C/O ANNA E STANLEY (perfected under Permit S-18018)
  - Use:** IRRIGATION of 54.9 ACRES
  - Priority Date:** MAY 14, 1947
  - Rate:** 0.69 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, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** NORTH SANTIAM RIVER, tributary to the SANTIAM RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot
9 S	1 W	WM	19	NW SE	2

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
9 S	1 W	WM	19	SW NE	5	18.2
9 S	1 W	WM	19	SE NW	6	2.6
9 S	1 W	WM	19	NE SW	7	17.3
9 S	1 W	WM	19	NW SW	8	0.6
9 S	1 W	WM	19	NW SE	2	16.2
TOTAL						54.9

- Certificate 23864 does not describe the location of the point of diversion, however information is available from the Certified Water Right Examiner indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	1 W	WM	19	NW SE	3110 FEET SOUTH AND 1490 FEET WEST FROM THE NE CORNER OF SECTION 19

- Transfer Application T-10814 proposes to move the authorized point of diversion to a point of appropriation approximately 150 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	1 W	WM	19	NW SE	3140 FEET SOUTH AND 1630 FEET WEST FROM THE NE CORNER OF SECTION 19

- Notice of the application for transfer was published on March 13, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On July 16, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10814 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of August 15, 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 applicant is authorized to pursue the transfer.

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

- Water has been used within the five-year period prior to submittal of the transfer application 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.

8. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-10814.
9. The proposed well meets the requirements of ORS 540.531. Pumping of the well will cause depletion of the surface water source at a rate of at least 50 percent of the rate of appropriation within 10 days of continuous pumping, in accordance with OAR 690-380-2130(2)(c) and (11)(b).
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

### **Determination and Proposed Action**

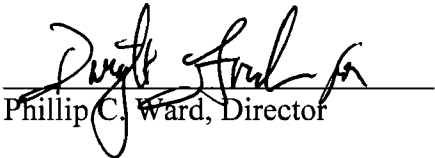
The change from a surface water point of diversion to a ground water appropriation proposed in Transfer Application T-10814 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-2130 and 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

*If Transfer Application T-10814 is approved, the final order will include the following:*

1. *The change from a surface water point of diversion to a ground water appropriation proposed in Transfer Application T-10814 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 23864 and any related decree.*
3. *Water right certificate 23864 is cancelled.*
4. *The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *The well from which water is taken under the right shall be constructed so that the use of the well will affect the surface water source similarly to the use of the original authorized point of diversion.*
6. *The use of water under this right shall be subject to regulation consistent with other water rights from the surface water source and to all other applicable conditions and restrictions that existed at the original point of diversion.*
7. *If, within five years after approval of the transfer, the Department finds that the transfer results in substantial or undue interference with an existing ground water right due to use of the well, that would not have occurred in the absence of the transfer, the new point of appropriation shall be subordinate to the existing right injured by the transfer.*

8. *The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion under the transferred portion of the right. However, if within five years after approval of the transfer, the Department receives a transfer application to return to the last authorized surface water point of diversion, the application shall be approved.*
9. *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 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 meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
10. *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(s) and full beneficial use of the water.*
11. *When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 4 day of August 2010.

  
Phillip C. Ward, Director

This Preliminary Determination was prepared by Kara Morris. If you have questions about the information in the document, you may reach me at 503-986-0898 or Kara.B.Morris@wrdd.state.or.us

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