

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

In the Matter of Transfer Application)
T-10285, Marion County)
)
) REVISED PRELIMINARY
) DETERMINATION PROPOSING
) APPROVAL OF A CHANGE IN POINT
) OF APPROPRIATION

Authority

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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

BASIL MICHAEL ELIAS
3400 PORTLAND ROAD NE
SALEM, OR 97301

Findings of Fact

Background

1. On December 20, 2006, Basil Michael Elias filed an application to change the point of appropriation under a portion of Certificate 49470. The Department assigned the application number T-10285.
2. The portion of the right to be transferred is as follows:
 - Certificate:** 49470 in the name of MARTIN WERNER MAURER (perfected under Permit G-4569)
 - Use:** IRRIGATION of 73.2 ACRES
 - Priority Date:** APRIL 24, 1969
 - Rate:** 0.91 CUBIC FEET PER SECOND (cfs)
 - 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
 - Source:** A WELL within the PUDDING RIVER BASIN

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.

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
6 S	1 W	WM	33	SW SE	Cox 45	650 FEET NORTH AND 2710 FEET EAST FROM THE SW CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	DLC	Acres
6 S	1 W	WM	33	NE SW	Cox 45	3.6
6 S	1 W	WM	33	SE SW	Cox 45	38.1
6 S	1 W	WM	33	NW SE	Cox 45	3.2
6 S	1 W	WM	33	SW SE	Cox 45	27.4
7 S	1 W	WM	4	NW NE	Cox 58	0.5
7 S	1 W	WM	4	NE NW	Cox 58	0.4

- Transfer Application T-10285 proposes to change the point of appropriation for the above described lands approximately 1000 feet east from the authorized well to:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
6 S	1 W	WM	33	SW SE	Cox 45	520 FEET NORTH AND 3640 FEET EAST FROM THE SW CORNER OF SECTION 33

- Notice of the application for transfer was published on December 26, 2006, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On September 30, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve transfer application T-10285 and mailed a copy to the applicants. The draft Preliminary Determination cover letter set forth a deadline of November 1, 2009, for the applicant to respond and provide a report of ownership. No response was received from the applicant.
- On November 13, 2009, the Department sent a letter to the applicant requesting the applicant to respond by December 14, 2009, to the requirements outlined in the September 30, 2009 letter. The letter again requested the applicant to provide a report of ownership and to respond to the conditions regarding the requirement of a measurement device and the requirement of the casing and sealing of the well. No response was received from the applicant.
- On December 30, 2009, the Department placed a phone call and left a message for the applicant to contact the Department on how he wished to proceed.
- On January 11, 2010, the applicant contacted the Department and requested the transfer application be placed on "administrative hold" until June 11, 2010.
- On June 30, 2010, the Department placed a phone call and left a message for the applicant to contact the Department on how he wished to proceed. No response was received from the applicant.

10. On August 3, 2010, the Department sent a letter to the applicant identifying the deficiencies still unresolved and requested a written response as to how he wishes to proceed. The letter requested a response from the applicant by September 3, 2010. The letter stated absent any response the Department would issue a Preliminary Determination to deny the application as incomplete, consistent with the completeness standards currently in effect. No response was received from the applicant by that date.
11. On September 16, 2010, the Department issued a Preliminary Determination proposing to deny Transfer Application T-10285 as incomplete, and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on September 21, 2010.
12. On September 22, 2010, the applicant contacted the Department indicating he disagreed with the Preliminary Determination to deny.
13. On September 29, 2010, the applicant corrected the deficiencies in the application and supplied the necessary information to complete the transfer.
14. On September 29, 2010, the Department issued an order withdrawing the Preliminary Determination issued on September 16, 2010.

Transfer Review Criteria (OAR 690-380-4010)

15. Water has been used within the last five years prior to the submittal of Transfer Application T-10285 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.
16. A well, 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-10285.
17. The Department has determined that the proposed point of appropriation will develop the same source of water as the authorized existing well (MARI 3553). In addition, the Department has determined that groundwater production from the new proposed well shall be limited to the equivalent water-bearing zones encountered in the original authorized well (MARI 3553).
18. The proposed change would not result in enlargement of the right.
19. The proposed change, as properly conditioned, would not result in injury to other existing groundwater rights.

Determination and Proposed Action

The change in point of appropriation proposed in Transfer Application T-10285 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

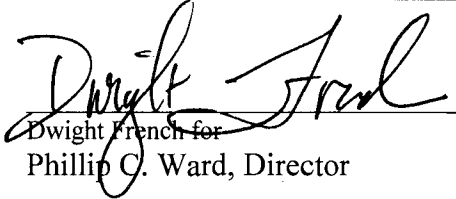
If application T-10285 is approved, the final order will include the following:

1. *The change in point of appropriation proposed in application T-10285 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 49470 and any related decree.*
3. *Water right certificate 49470 is cancelled. 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 appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
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 point of appropriation.*
 - 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. *The proposed new well shall be cased and sealed at least 40 feet into hard, dense basalt to effectively reduce the hydraulic connection between the CRB and the above lying alluvial aquifer systems. In addition, the open interval in the proposed well shall be no greater than the open interval in the original, authorized well (MARI 3553). The "open interval" means the total length of the borehole that is not behind sealed casing. The borehole above the open interval shall be continuously cased and continuously sealed to land surface. The completed depth of the proposed well shall be between 300 and 500 feet deep and will produce water from the Columbia River Basalt Group (CRB). The well will be sealed 50 - 100 feet below land surface*
7. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
8. *The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2013**. 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.

9. *When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 30 day of September, 2010.


Dwight French for
Phillip C. Ward, Director

This Preliminary Determination was prepared by Teri Hranac. If you have any questions about the information in this document, please contact me at (503) 986-0881 or teri.k.hranac@wrд.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.