

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-9179, Josephine County) PROPOSING DENIAL 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.

Applicant

ZAKAR AND DOLORES CHAGHATZBANIAN
24145 REDWOOD HIGHWAY
KERBY OR 97531

Findings of Fact

Background

1. On July 5, 2002, ZAKAR AND DOLORES CHAGHATZBANIAN filed an application to change the point of diversion under Certificates 13900 and 13945. The Department assigned the application number T-9179.
2. This application was part of a group of applications submitted by the Illinois Valley Soil and Water Conservation District with Oregon Watershed Enhancement Board (OWEB) providing funding to change the point of diversion approximately 4 miles downstream from the authorized point of diversion at the Kirby Ditch. Because the Kirby Ditch Association could not fully agree on the new point of diversion location and could not obtain all of the necessary easements, the OWEB project was not completed. However, many of the companion transfer applications proceeded forward to a Final Order.
3. On June 12, 2004, the applicants amended Transfer Application T-9179 to include additional lands under Certificate 13900.
4. On October 1, 2007, the applicants requested Transfer Application T-9179 be withdrawn. No order was issued on the request.

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.

5. On October 1, 2008, the applicants cancelled their request to withdraw the transfer application, stating they had decided to alter the previous point of diversion proposal.
6. On July 29, 2009, the Department sent a letter to the applicants outlining available alternatives for proceeding on the transfer application and setting a deadline of September 8, 2010, for the applicants to respond.
7. On September 7, 2010, the Department received written communications from the applicants requesting the Department proceed forward with processing the transfer application and requesting the maximum time available to complete the transfer.
8. The portion of the first right to be transferred is as follows:

Certificate: 13900 in the name of DELIA L. PAYNE (confirmed by Illinois River Decree)

Use: IRRIGATION OF 0.28 ACRE

Priority Date: MAY, 1887

Rate/Limit: 0.006 cubic foot per second. The amount of water to which such right is entitled for the purposes aforesaid, is limited an amount actually beneficially used for said purposes, and shall not exceed one cubic foot per second for each 50 acres of land irrigated during the irrigation season from April 1 to November 1 of each year.

Source: EAST FORK ILLINOIS RIVER, tributary to the ILLINOIS RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	8 W	WM	9	NW NE	0.28

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

Certificate: 13945 in the name of ARTHUR WILLIAMS (confirmed by Illinois River Decree)

Use: IRRIGATION of 0.16 ACRE

Priority Date: MAY, 1887

Rate/Limit: 0.003 cubic foot per second. The amount of water to which such right is entitled for the purposes aforesaid, is limited an amount actually beneficially used for said purposes, and shall not exceed one cubic foot per second for each 50 acres of land irrigated during the irrigation season from April 1 to November 1 of each year.

Source: EAST FORK ILLINOIS RIVER, tributary to the ILLINOIS RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	8 W	WM	9	NW NE	0.16

10. Certificates 13900 and 13945 do 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 for both certificates is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	8 W	WM	27	SE NW	1650 FEET SOUTH AND 1800 FEET EAST FROM THE NW CORNER OF SECTION 27

11. Transfer Application T-9179 proposes to move the authorized point of diversion for Certificates 13900 and 13945 approximately 4.5 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	8 W	WM	9	SW NW	1825 FEET SOUTH AND 690 FEET EAST FROM THE NW CORNER OF SECTION 9

12. Notice of the application for transfer was published on July 30, 2002, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
13. 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.
14. On September 10, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9179 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of October 12, 2010, for the applicants to respond with the requested ownership documentation and approval of the draft Preliminary Determination.
15. On October 8, 2010, the applicants left a telephone message with the caseworker stating he was no longer able to proceed with the transfer application.
16. On October 20, 2010, the Department mailed a letter to the applicants enclosing a withdrawal form along with a stamped self-addressed envelope. To date, no response has been received to the October 20, 2010 letter nor has the requested documentation and approval of the draft Preliminary Determination been received.

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

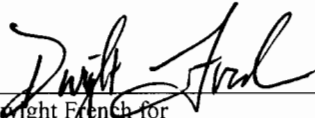
17. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
18. A diversion structure and ditch 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-9179.
19. The proposed change would not result in enlargement of the rights.

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

Determination and Proposed Action

The change in points of diversion proposed in Transfer Application T-9179 is **not** consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. Transfer Application T-9179 does not meet the requirements of ORS Chapter 540, OAR 690-380-2000, or OAR 690-830-3000 for completeness (as described in Findings of Fact No. 15 and No. 16 above). If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be **denied**.

Dated at Salem, Oregon this 29 day of November, 2010.



Dought French for
PHILLIP C. WARD, DIRECTOR

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