

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-10304, Jackson 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

WILLIAM AND MARIE KANE
PO Box 1558
EAGLE POINT, OR 97524

Agent

ROBERT JONES
725 N LAUREL ST
ASHLAND, OR 97520

Findings of Fact

Background

1. On February 2, 2007, WILLIAM KANE filed an application to change the point of diversion under Certificate 17165. The Department assigned the application number T-10304.
2. On May 20, 2002, Certificate 17165 was cancelled by Special Order Volume 56, Pages 324 through 330, and on October 12, 2007, Certificate 83593 was issued.
3. The right to be transferred is as follows:

Certificate: 83593 in the name of WILLIAM KANE (confirmed by Little Butte Creek, 1949)

Use: IRRIGATION of 13.4 ACRES

Priority Date: 1888 for Tract 2, 1908 for Tract 3

Rate: 0.25 cubic feet per second for Tract 2, 0.08 feet per second for Tract 3

Source: LITTLE BUTTE CREEK, tributary to the ROGUE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	1 E	WM	4	NW SE	880 FEET SOUTH AND 50 FEET EAST FROM THE C1/4 CORNER OF SECTION 4

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.

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	1 E	WM	5	NW NW	960 FEET SOUTH AND 1370 FEET WEST FROM THE N1/4 CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tract
36 S	1 E	WM	5	NE NW	10.2	2
36 S	1 E	WM	5	NW NW	3.2	3

4. Certificate 83593 does not describe the duty of the right; however information is available from the decree indicating that the duty allowed for the right is one-fortieth of one cubic foot per second per acre in the case of small tracts, to not to exceed one-sixtieth of one cubic foot per second per acre, in the case of larger tracts.
5. Certificate 83593 does not describe period of use; however information is available from the decree indicating that the period of use is from April 1 to October 1.
6. Transfer Application T-10304 proposes to move the authorized point of diversion to:

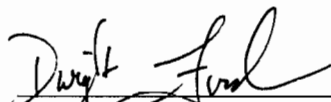
Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	1 E	WM	5	NW NW	960 FEET SOUTH AND 1370 FEET WEST FROM THE N¼ CORNER OF SECTION 5

7. Notice of the application for transfer was published on February 13, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. Certificate 83593, signed October 12, 2007, changed the point of diversion to the location proposed in Transfer Application T-10304. Therefore, Transfer Application T-10304 is not necessary.
9. The Department contacted the applicant's agent several times by phone and email to recommend that the applicant withdraw Transfer Application T-10304. The Department has not received a request to withdraw the transfer application.
10. On February 3, 2010, the Department issued a draft Preliminary Determination proposing to deny Transfer Application T-10304 and mailed a copy to the applicant. Applicant and applicant's agent contacted the Department regarding the denial of the application.
11. On February 16, 2010, the Department sent a letter to the applicant stating the point of diversion change had already been approved, and requesting the applicant withdraw the transfer.
12. Numerous phone and e-mail messages to the applicant and applicant's agent have not resulted in withdrawal of the transfer application.

Determination and Proposed Action

The change in point of diversion proposed in Transfer Application T-10304 has already been confirmed by Certificate 83593 and no change is proposed that can be approved. Therefore, Transfer Application will be denied.

Dated at Salem, Oregon this 23 day of December, 2010.


Dwight French for
Phillip C. Ward, Director

This Preliminary Determination was prepared by Teri Hranac. If you have questions about the information in this document, you may reach me at 503-986-0881 or teri.k.hranac@wrd.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.