

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

In the Matter of Transfer Application) AMENDED PRELIMINARY
T-9586, Douglas County) DETERMINATION PROPOSING
) **APPROVAL OF A CHANGE IN POINT**
) **OF DIVERSION AND PLACE OF USE**

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

ROBERT AND DEBORAH KELLER
13621 SOUTH MYRTLE ROAD
MYRTLE CREEK OR 97457

Findings of Fact

Background

1. On September 30, 2003, STEVE POTTER filed an application to change the point of diversion and to change the place of use under Certificate 8100. The Department assigned the application number T-9586.
2. On September 8, 2004, Transfer Application was assigned to Robert and Deborah Keller from Steven Potter.
3. The portion of the right to be transferred is as follows:

Certificate: 8100 in the name of E. M. MARSTERS (perfected under Permit S-8233)
Use: IRRIGATION OF 7.53 ACRES AND DOMESTIC
Priority Date: OCTOBER 31, 1927
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, shall be to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent in case of rotation.
Source: WEAVER CREEK, tributary to SOUTH MYRTLE CREEK

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q |
|------|-----|-----|-----|-------|
| 29 S | 3 W | WM | 16 | SW NE |

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 Place of Use:

| IRRIGATION AND DOMESTIC | | | | | |
|-------------------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 29 S | 3 W | WM | 16 | SW SE | 7.53 |

4. Certificate 8100 does not specify the location of the point of diversion; however, information available from the Certified Water Right Examiner indicates the authorized point of diversion is located as follows:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|-----|-----|-----|-------|--|
| 29 S | 3 W | WM | 16 | SW NE | 2954 FEET NORTH AND 611 FEET EAST FROM THE S¼ CORNER OF SECTION 16 |

5. Transfer Application T-9586 proposes to move the authorized point of diversion approximately 1763 feet downstream to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|-----|-----|-----|-------|--|
| 29 S | 3 W | WM | 16 | SW SE | 1191 FEET NORTH AND 579 FEET EAST FROM THE S¼ CORNER OF SECTION 16 |

6. Transfer Application T-9586 also proposes to change the place of use of the right to:

| IRRIGATION AND DOMESTIC | | | | | |
|-------------------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 29 S | 3 W | WM | 16 | SE SW | 7.49 |
| 29 S | 3 W | WM | 16 | NW SE | 0.04 |

7. Notice of the application for transfer was published on November 4, 2003, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On December 13, 2005, the Department contacted Robert Keller by telephone and by written correspondence to notify the applicant of the deficiencies in the application. The Department requested that the deficiencies be resolved. No response was received to the letter.
9. On September 28, 2009, the Department contacted Robert and Deborah Keller by telephone and by written correspondence to notify the applicant of the deficiencies in the application. The Department requested that the deficiencies be resolved by December 1, 2009.
10. On November 10, 2009, Deborah Keller contacted the Department by telephone. The Department followed-up that conversation by written correspondence dated November 20, 2009. The correspondence outlined the deficiencies in the transfer application and requested the deficiencies be resolved by January 4, 2010. No response was received to the letter.
11. On September 8, 2010, the Department issued a draft Preliminary Determination proposing to deny Transfer Application T-9586 because the application did not include a map meeting current mapping standards, or the standards which were in effect at the time the application was filed being OAR 690-15-060(18). Specifically, the location of the 7.53 acres where the water right was to be moved "from" was not included on the map. In addition, 3.74 acres of land were not included on the map, nor was Partial Cancellation submitted for the acreage.

12. On September 14, 2010, the applicants contacted the Department and disagreed with the denial of the application and requested an opportunity to correct the deficiencies.
13. On October 5, 2010, the applicants submitted a corrected map which meets the current mapping standings.
14. On November 14, 2010, Deborah Keller submitted a Partial Cancellation Affidavit for 3.74 acres of land.
15. On November 30, 2010, Robert Keller submitted a Partial Cancellation Affidavit for 3.74 acres of land.
16. On December 1, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-9586 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer was published on the Department's weekly notice on December 7, 2010.
17. On December 31, 2010, the applicants submitted requests to withdraw the Affidavits of Partial Cancellation of Water Rights.
18. On January 5, 2011, an amended map was submitted clarifying the remaining right under Certificate 8100.
19. All deficiencies outlined in the November 10, 2009 letter and the September 8, 2010 draft Preliminary Determination, have been resolved. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
20. 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.

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

21. 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.
22. 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-9586.
23. The proposed changes would not result in enlargement of the right.

24. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

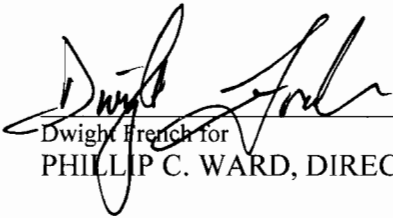
The change in point of diversion and change in place of use proposed in Transfer Application T-9586 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-9586 is approved, the final order will include the following:

1. *The change in point of diversion and change in place of use proposed in Transfer Application T-9586 are 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 8100 and any related decree.*
3. *Water right certificate 8100 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 diversion shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *The former place of use of the transferred right shall no longer receive water under the right.*
6. *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 meters or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
7. *Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*

8. *The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. 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 changes 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 7 day of January, 2011.


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.