

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

In the Matter of Transfer Applications)	PRELIMINARY DETERMINATION
T-11038 and T-10286, Lake County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF
)	APPROPRIATION, A CHANGE IN
)	PLACE OF USE AND TERMINATION
)	OF A TEMPORARY TRANSFER

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

Larry and Tara Grassman
PO Box 101
Christmas Valley, OR 97641

Agent

Dennis R. Glender
Glender's Hydro Tech Services
PO Box 101
Christmas Valley, OR 97641

Receiving Landowner

Dustin and Courtnie Grassman
PO Box 101
Christmas Valley, OR 97641

Receiving Landowner

Edward L. Whitfield
12091 Saint Mark St.
Garden Grove, CA 92641

Landowner

DG Properties, LLC
17180 Robb Place
Lake Oswego, OR 97034

Landowner

Rachel O'Ryan
1036 Riverside Dr
San Jose, CA 95125

Landowner

Lorin A. and Gyna Walton
74232 London Rd
Cottage Grove, OR 97424

Findings of Fact

Background

1. On March 22, 2010, LARRY AND TARA GRASSMAN filed an application proposing an additional point of appropriation and to change the place of use under Certificates 79432 and 83124. The Department assigned the application number T-11038.

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.

2. On October 6, 2010, Certificate 86621 was cancelled by Special Order Volume 82, pages 36-41, which corrected a scrivener's error in T-10231, and was superseded by Certificate 86621.
3. On December 6, 2010, the applicant's agent Dennis Glender modified the application to propose a CHANGE in point of appropriation (POA), rather than an ADDITIONAL POA.
4. The portion of the first right to be transferred is as follows:

Certificate: 79432 in the name of LARRY AND TARA GRASSMAN (perfected under Permit G-9205)
Use: IRRIGATION of 13.36 ACRES
Priority Date: FEBRUARY 18, 1981
Rate: 0.17 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, 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL within the FORK ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	17 E	WM	1	SE SE	SOUTH 89 DEGREES 17 MINUTES 57 SECONDS WEST, 1325.60 FEET FROM THE NE CORNER OF THE SESE OF SECTION 1

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	17 E	WM	1	NW SE	6.31
27 S	17 E	WM	1	SE SE	7.05

5. Transfer Application T-11038 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	17 E	WM	1	SW SE	13.36

6. The second right to be transferred is as follows:

Certificate: 86621 in the name of DAVID AXON (perfected under Permit G-10701)
Use: IRRIGATION of 45.49 ACRES
Priority Date: NOVEMBER 3, 1983
Rate: 0.569 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, is limited to a diversion of

12. Notice of the application for transfer was published on March 30, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
13. On December 8, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11038 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of January 10, 2011, 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 applicants are authorized to pursue the transfer.

Transfer Review Criteria (OAR 690-380-4010)

14. Water has been used within the last five years according to the terms and conditions of the rights, as modified by an order of the Department approving Temporary Transfer T-10286 recorded at Special Order Volume 71, Pages 143-146. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
15. A pump, pipeline, and sprinkler system 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-11038.
16. The proposed change would not result in enlargement of the rights.
17. The proposed change, as conditioned below, would not result in injury to other water rights.

Determination and Proposed Action

The change in point of appropriation and change in place of use proposed in Transfer Application T-11038 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000, provided temporary transfer T-10286 is terminated. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and T-10286 will be terminated.

If Transfer Application T-11038 is approved, the final order will include the following:

1. *The change in point of appropriation and change in place of use proposed in Transfer Application T-11038 are approved.*
2. *Temporary Transfer T-10286 is terminated. The Final Order recorded at Special Order Volume 71, Pages 143-146 is of no further force or effect.*
3. *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 Certificates 79432 and 86621 and any related decree.*
4. *Water right certificates 79432 and 86621 are cancelled. A new certificate will be issued describing that portion of the right evidenced by Certificate 79432 not affected by this transfer.*

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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL within the FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
28 S	16 E	WM	10	SW NW	1320 FEET SOUTH AND 1320 FEET EAST FROM THE NW CORNER OF SECTION 10

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
28 S	16 E	WM	10	NE NW	32.50
28 S	16 E	WM	10	NW NW	12.99

7. Transfer Application T-11038 proposes to move the point of appropriation approximately 10.7 miles northeast from the existing point of appropriation to Well #2 (well log LAKE 4307):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	17 E	WM	1	SE SE	SOUTH 89 DEGREES 17 MINUTES 57 SECONDS WEST, 1325.60 FEET FROM THE NE CORNER OF THE SESE OF SECTION 1 (also described as 1311 FEET NORTH AND 1310 FEET WEST FROM THE SE CORNER OF SECTION 1)


8. Transfer Application T-11038 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	17 E	WM	1	NE SE	25.40
27 S	17 E	WM	1	SW SE	20.09

9. The portions of the rights proposed for transfer are currently being used on the proposed lands under provisions of Temporary Transfer T-10286, recorded at Special Order Volume 71, Pages 143-146. Temporary Transfer T-10286 will expire at the end of the 2011 irrigation season unless terminated early. The rights proposed for transfer are not subject to further transfer as long as T-10286 is in effect. Approval of Transfer Application T-11038 is contingent on expiration or prior termination of T-10286.
10. On February 9, 2011, the applicant's agent requested that T-10286 be terminated prior to issuance of an order approving T-11038.
11. The Department has determined that additional measurement conditions are required to ensure the proposed change in point of appropriation will not result in injury to surrounding water rights.

5. *The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original points of appropriation.*
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 the proposed 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.*
7. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
8. *The former place of use of the transferred portions of the rights described in Certificates 79432 and 86621 shall no longer receive water under the rights.*
9. *The approved changes 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.*
10. *When satisfactory proof of the completed changes is received, new certificates confirming the portions of the rights transferred will be issued.*

Dated at Salem, Oregon this 14 day of February 2011.


Dwight French for
PHILIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Dorothy Pedersen. If you have questions about the information in this document, you may reach me at 503-986-0890 or Dorothy.I.Pedersen@wrdd.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.