

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-10023, Polk County)	PROPOSING APPROVAL OF
)	CHANGES IN POINTS 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

SANDRA L. MORITZ
8775 RED PRAIRIE ROAD
SHERIDAN OR 97378

Findings of Fact

Background

1. On November 3, 2005, Sandra L. Moritz filed a transfer application to change the place of use and point of diversion under Certificates 14476, 15128, and 21277. The Department assigned the application number T-10023.

2. The first right to be transferred is as follows:

Certificate: 14476 in the name of WM. ROSENBALM (perfected under Permit S-13782)

Use: IRRIGATION of 10.0 ACRES

Priority Date: MAY 31, 1939

Rate: 0.13 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 limited to ONE-EIGHTIETH of one cubic foot per second per acre, 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: MILL CREEK, tributary to the YAMHILL RIVER

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.
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Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	6 W	WM	9	NW NW	39	None specified on certificate

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	6 W	WM	5	SE SE	39	2.8
6 S	6 W	WM	8	NE NE	39	5.8
6 S	6 W	WM	9	NW NW	39	1.4

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

Certificate: 15128 in the name of WM. ROSENBALM (perfected under Permit S-14869)

Use: IRRIGATION of 4.0 ACRES

Priority Date: APRIL 16, 1941

Rate: 0.05 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 limited to ONE-EIGHTIETH of one cubic foot per second per acre, 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: MILL CREEK, tributary to the YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	6 W	WM	9	NW NW	39	None specified on certificate

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	6 W	WM	8	NE NE	39	4.0

4. The portion of the third right to be transferred is as follows:

Certificate: 21277 in the name of W. H. HIBBERT (perfected under Permit S-18805)

Use: IRRIGATION of 4.4 ACRES

Priority Date: MARCH 18, 1949

Rate: 0.055 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 limited to ONE-EIGHTIETH of one cubic foot per second per acre, 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: MILL CREEK, tributary to the SOUTH YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	6 W	WM	4	SW SW	39	None specified on certificate

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	6 W	WM	4	SW SW	39	2.5
6 S	6 W	WM	5	SE SE	39	1.0
6 S	6 W	WM	8	NE NE	39	0.5
6 S	6 W	WM	9	NW NW	39	0.4

5. Certificate 21277 does not specify the exact point of diversion; however, information is available from the final proof survey map indicating that the point of diversion is located within the NWSW of Section 4, T 6 S, R 6 W, W.M.

6. Transfer Application T-10023 proposes to move the authorized points of diversion approximately 1.5 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	6 W	WM	16	NW NW	40	1070 FEET NORTH AND 1920 FEET EAST FROM SW CORNER OF ANTHONY SELDER DLC 40

7. Transfer Application T-10023 proposes to change the place of use of Certificate 14476 to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	6 W	WM	9	SE SW	40	4.1
6 S	6 W	WM	9	SW SE	40	5.9

8. Transfer Application T-10023 proposes to change the place of use of Certificate 15128 to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	6 W	WM	9	SW SE	40	4.0

9. Transfer Application T-10023 proposes to change the place of use of Certificate 21277 to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	6 W	WM	9	SW SE	40	4.4

10. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice

11. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.

13. The proposed changes would not result in enlargement of the rights.
14. An instream water right, Certificate 72985, exists for the reach of the river in which the authorized point of diversion would be moved upstream. Earlier analysis by Department staff indicated that the flows within the reach were below the levels allocated under the instream water right. Thus, the earlier analysis concluded the instream water right would be injured as a result of the proposed change in point of diversion.
15. On November 3, 2005, the applicant requested the Department to pursue Consent to Injury of Instream Water Right as provided in OAR 690-380-4030.
16. On February 13, 2006, the Department issued a Preliminary Determination proposing to reject Transfer Application T-10023. The draft Preliminary Determination cover letter set forth a deadline of March 9, 2006 for the applicant to respond.
17. On March 20, 2006, the Department issued a Preliminary Determination proposing to deny Transfer Application T-10023 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on March 21, 2006, and in the Polk County Itemizer-Observer newspaper on April 5, 12, and 19, 2006, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were received in response to the notices.
18. On March 20, 2006, the Department requested a recommendation from the Oregon Department of Environmental Quality regarding the possible injury to its instream water right.
19. On September 14, 2006, the DEQ notified the applicant that the proposed water right transfer will not provide a net benefit to the resource.
20. The best available information and historic streamflow measurements indicate that the flows within the reach exceed the levels allocated under the instream water right. Thus, the instream water right would not be injured as a result of the proposed change in point of diversion.
21. On February 8, 2011, the Department issued an Order Withdrawing Preliminary Determination Rejecting a Change in Point of Diversion and Place of Use and Withdrawing Request to DEQ for Consent to Injury.
22. 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.
23. On February 2, 2011, the applicant requested the following condition be included in the final order: "Diversion at the new authorized point of diversion shall only occur when flows in Mill Creek exceed 1.5 cfs."

Determination and Proposed Action


The change in points of diversion and places of use proposed in Transfer Application T-10023 appear to be consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000. The Department proposes to approve the transfer application unless protests are filed pursuant to OAR 690-380-4030.

If Transfer Application T-10023 is approved, the final order will include the following:

1. *The change in points of diversion and change in places of use proposed in Transfer Application T-10023 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 Certificates 11476, 15128, 21277, and any related decree.*
3. *Water right certificates 11476, 15128 and 21277 are cancelled. New certificates will be issued describing those portions of Certificates 15128 and 21277 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 points of diversion.*
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 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.*
6. *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.*
7. *The former places of use of the transferred rights shall no longer receive water under the rights.*

8. *Diversion at the new point of diversion shall only occur when flows in Mill Creek exceed 1.5 cfs.*
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 rights transferred will be issued.*

Dated at Salem, Oregon this 14 day of February, 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@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 97301-1271.