

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11191, Malheur County)	PROPOSING APPROVAL OF
)	CHANGES IN POINT OF DIVERSION
)	AND PLACE OF USE, AND PARTIAL
)	CANCELLATION OF A WATER
)	RIGHT

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

MICHAEL J. & MISHAEL C. SWEENEY
2002 HWY 201
ADRIAN, OR 97901

Receiving Landowner

LINDA M. HESS
35 N HASTINGS DRIVE
NAMPA, ID 83687

Agent

CK3, LLC
DAN CUMMINGS
368 SW 5TH AVE
ONTARIO, OR 97914

Findings of Fact

Background

1. On January 27, 2011, MICHAEL J. AND MISHAEL C. SWEENEY, filed an application for an additional point of diversion and to change the place of use under Certificate 30299. The Department assigned the application number T-11191.

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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2. On March 7, 2011 the agent for T-11191 clarified that the intent of the transfer was for a change in point of diversion instead of an additional point of diversion and requested that the transfer be modified accordingly.

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

Certificate: 30299 in the name of FRED L PARKER (perfected under Permit S-27030)
Use: IRRIGATION of 3.55 ACRES
Priority Date: OCTOBER 12, 1960
Rate: 0.09 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-FORTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: SNAKE RIVER, tributary to the COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q
21 S	46 E	WM	27	NW NE
21 S	46 E	WM	27	NE SW

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	T Lot	Acres
21 S	46 E	WM	27	NW NE	1	600	2.05
21 S	46 E	WM	27	SW NE	2	600	1.50

4. Certificate 30299 does not describe the location of the point of diversion, however information is available from the transfer application and map which indicates that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
21 S	46 E	WM	27	NW NE	PUMP #1: S 48° 45'E, 1221 FEET FROM THE N¼ CORNER OF SECTION 27
21 S	46 E	WM	27	NE SW	PUMP #2: S1° 24'E, 2715 FEET FROM THE N¼ CORNER OF SECTION 27

5. Transfer Application T-11191 proposes to move the authorized points of diversion approximately 1.5 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
21 S	46 E	WM	34	SE NW	PUMP #3: 766 FEET SOUTH AND 968 FEET EAST FROM THE NW1/16 CORNER OF SECTION 34

6. Application T-11191 also proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	T Lot	Acres
21 S	46 E	WM	34	SE NW	2	6100	3.55

7. Notice of the application for transfer was published on February 8, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On March 9, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11191 to the applicants. The draft Preliminary Determination set forth a deadline of April 8, 2011, for the applicants to respond. On March 9, 2011 the department received comments from the agent for T-11191.
9. On March 10, 2011 a revised preliminary determination was issued.
10. On March 17, 2011, the applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
12. 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)]

13. Water has been used within the last five years 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.
14. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11191.
15. The proposed changes would not result in enlargement of the right.
16. The proposed changes would not result in injury to other water rights.

Partial Cancellation of a Water Right

17. On March 18, 2011, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Michael and Mishael Sweeny. The right to be cancelled is as follows:

Certificate: 30299 in the name of FRED L PARKER (perfected under Permit S-27030)
Use: IRRIGATION of 0.95 ACRE

Priority Date: OCTOBER 12, 1960

Rate: 0.02 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-FORTIETH 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 4 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: SNAKE RIVER, tributary to the COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q
21 S	46 E	WM	27	NW NE
21 S	46 E	WM	27	NE SW

Authorized Place of Use to be Cancelled:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	T Lot	Acres
21 S	46 E	WM	27	NW NE	1	600	0.95

Determination and Proposed Action

The change in points of diversion and change in place of use proposed in Transfer Application T-11191 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the portion of the abandoned right will be cancelled.

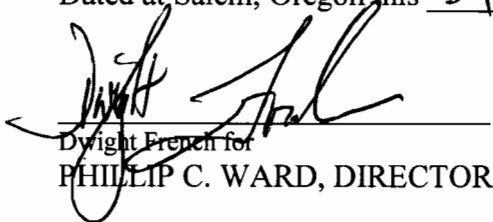
If application T-11191 is approved, the final order will include the following:

- 1. The change in points of diversion and change in place of use proposed in application T-11191 are approved. The portion of the right that has been abandoned is cancelled.*
- 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 30299 and any related decree.*
- 3. Water right certificate 30299 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.*
- 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. The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water*

user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.

6. *When required by the Department, the water user shall install, maintain and operate a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.*
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 former place of use of the transferred right shall no longer receive water under the right.*
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, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 31 day of March 2011.


Dwight French for
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Carrie Jones. If you have questions about the information in this document, you may reach me at 541-523-8224 x 36 or Carrie.R.Jones@ 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.



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

March 30, 2011

CK3, LLC
DAN CUMMINGS
368 SW 5TH AVE
ONTARIO, OR 97914

SUBJECT: Water Right Transfer Application T-11191

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11191. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication simultaneously with issuance of the Preliminary Determination. The notice initiates a 30-day period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision.

Because the new point of diversion is more than ¼ mile from the authorized points of diversion, the applicant is responsible for giving public notice of the transfer changes in a local newspaper having a general circulation in the area of the water right. The notice must be published at least once a week for three consecutive weeks. We have prepared the notice for you (enclosed). The deadline for individuals to file protests or standing statements is 30 days after the date of last publication. Please have the newspaper insert the date of last publication in the proper place.

After publication, the Department needs to receive an affidavit specifying the dates the notice was published. Please have the newspaper prepare and mail an original affidavit of publication to me at the address shown in the letterhead, **by May 16, 2011.**

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0890 or Dorothy.I.Pedersen@wrdd.state.or.us if I may be of assistance.

Sincerely,

Dorothy I. Pedersen
Water Rights Services Division

cc: T-11191
Michael J. and Mishael C. Sweeney, applicants
Linda M. Hess, receiving landowner
Ronald K. Jacobs, District 9 Watermaster

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**Notice of Preliminary Determination for
Water Right Transfer T-11191**

T-11191 filed by MICHAEL J. AND MISHAEL C. SWEENEY, 2002 HWY 201, ADRIAN, OR 97901, proposes CHANGES IN POINT OF DIVERSION AND PLACE OF USE under Certificate 30299. The right allows the use of 0.09 CUBIC FOOT PER SECOND (priority date OCTOBER 12, 1960) from the SNAKE RIVER in Sec. 27, T 21 S, R 46 E, W.M. for IRRIGATION in Sec.27. The applicant proposes to move the authorized points of diversion approximately 1.5 miles upstream to Sec. 34, T 21 S, R 46 E, W.M. and to change the place of use to Sec. 34, T 21 S, R 46 E, W.M.. The Water Resources Department has concluded that the proposed transfer appears to be consistent with the requirements of ORS Chapter 540 and OAR 690-380-5000.

Any person may file, jointly or severally, with the Department a protest or standing statement within 30 days after the date of final publication of notice in the Department's weekly notice or of this newspaper notice, whichever is later. A protest form and additional information on filing protests may be obtained by calling (503) 986-0883. The last date of newspaper publication is [DATE OF LAST PUBLICATION]. If no protests are filed, the Department will issue a final order consistent with the preliminary determination.