

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

In the Matter of Transfer Application)
T-11266, Klamath County)
)
) PRELIMINARY DETERMINATION
) PROPOSING APPROVAL OF AN
) ADDITIONAL 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

KNOLL RANCH, LLC
BARRON KNOLL
GRANT KNOLL
5429 REEDER RD
KLAMATH FALLS, OR 97603

Findings of Fact

Background

1. On June 29, 2011, KNOLL RANCH, LLC, BARRON KNOLL and GRANT KNOLL, filed an application for an additional point of diversion under Certificate 44733. The Department assigned the application number T-11266.

2. On August 9, 2011, the applicant corrected a scrivener's error in the Evidence of Use Affidavit, and clarified that the change is for an additional point of appropriation.

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

- Certificate:** 44733 in the name of FREDERIC SCHILDMEYER; ROBERTA SCHILDMEYER (perfected under Permit S-35928)
- Use:** IRRIGATION of 440.0 ACRES
- Priority Date:** DECEMBER 2, 1971
- Rate:** 11.0 CUBIC FEET 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 of ONE-FORTIETH of one cubic foot per second, or its equivalent for each

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.

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 SPRING and UNNAMED STREAM, tributary to the UPPER KLAMATH LAKE

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
37 S	9 E	WM	6	SW NW	5	2800 FEET NORTH AND 1130 FEET EAST FROM THE SW CORNER OF SECTION 6
37 S	9 E	WM	6	SW NW	5	2640 FEET NORTH AND 1140 FEET EAST FROM THE SW CORNER OF SECTION 6
37 S	9 E	WM	6	SW NW	5	2640 FEET NORTH AND 640 FEET EAST FROM THE SW CORNER OF SECTION 6
37 S	9 E	WM	6	SW NW	5	2640 FEET NORTH AND 600 FEET EAST FROM THE SW CORNER OF SECTION 6

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
37 S	8 E	WM	1	SE SE	1	1.5
37 S	8 E	WM	12	NE NE	1	12.0
37 S	8 E	WM	12	SE NE	2	23.0
37 S	8 E	WM	12	NE SE	3	40.7
37 S	9 E	WM	6	NE SW		2.2
37 S	9 E	WM	6	NW SW	6	29.8
37 S	9 E	WM	6	SW SW	7	45.9
37 S	9 E	WM	6	SE SW		24.5
37 S	9 E	WM	7	NE NW		38.0
37 S	9 E	WM	7	NW NW	1	47.2
37 S	9 E	WM	7	SW NW	2	47.2
37 S	9 E	WM	7	SE NW		38.2
37 S	9 E	WM	7	NE SW		39.9
37 S	9 E	WM	7	NW SW	3	49.9
TOTAL						440.0

4. Transfer Application T-11266 proposes an additional point of diversion approximately 2 miles downstream in Upper Klamath Lake located at:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
37 S	8 E	WM	13	SW NE	2	1850 FEET SOUTH AND 2400 FEET WEST FROM THE NE CORNER OF SECTION 13

5. The proposed additional point of diversion is located on Upper Klamath Lake. The source of water under Certificate 44733 is listed as a Spring and an Unnamed Stream, tributary to Upper Klamath Lake. The Spring and Unnamed Stream flow into Upper Klamath Lake downstream from the original points of diversion. Water not diverted at the original points of diversion on the Unnamed Stream and Spring flows into Upper Klamath Lake and enters

the lake “pool.” The proposed additional point of diversion is on Upper Klamath Lake. The diversion rate at the proposed additional point of diversion (Upper Klamath Lake), together with the water diverted at the original points of diversion, cannot exceed water available for diversion at the original points of diversion (Spring and Unnamed Stream).

6. ORS 540.520 does not allow changes in the source of water. To avoid injury to junior users on Upper Klamath Lake, and to be in compliance with statutes, the source of water for this right remains a Spring and an Unnamed Stream which are tributary to Upper Klamath Lake.
7. Notice of the application for transfer was published on July 5, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On August 29, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11266 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 29, 2011, for the applicant to respond. The applicant 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.
9. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device may be required in the future 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.

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

10. 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.
11. A pump, canal, 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-11266.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

Determination and Proposed Action


The additional point of diversion proposed in Transfer Application T-11266 appears 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-11266 is approved, the final order will include the following:

- 1. The additional point of diversion proposed in application T-11266 is 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 44733 and any related decree.*
- 3. Water right certificate 44733 is cancelled.*
- 4. The quantity of water diverted at the additional point of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.*
- 5. Upper Klamath Lake is not the source of water for this right. Water diverted is limited to what is available at the original points of diversion (Spring and Unnamed stream) located in the SW NW of Section 6, Township 37 S, Range 9 E, W.M.*
- 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. Within one year after receiving written notification from the Oregon Department of Fish and Wildlife (ODFW) that a fish screening and/or by-pass device is required, the water user shall install a screening and/or by-pass device, as appropriate, at the new point of diversion. The fish screening and/or by-pass device must meet ODFW's design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screening and/or by-pass device meets ODFW's criteria. Once installed the water user shall maintain and operate the fish screening 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, 2013**. 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 change 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 28 day of September 2011.


Dwight French, Water Right Services Administrator, 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 Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.