

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11234, Harney County	)	PROPOSING APPROVAL OF
	)	CHANGES 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
ROD HOAGLAND
22286 FIELDS DRIVE
FIELDS, OR 97710

AGENT
ANDERSON ENGINEERING AND SURVEYING INC.
P.O. BOX 28
LAKEVIEW, OR 97630

Findings of Fact

Background

1. On April 18, 2011, ROD HOAGLAND, filed an application to add a point of diversion and, change the place of use under Certificate 468. The Department assigned the application number T-11234.
2. On December 4, 2011, the agent submitted a revised map and application, correcting a discrepancy in the proposed place of use.
3. On January 2, 2012, Ryan Conn, of Anderson Engineering, the applicant's agent, clarified by email that the applicant proposes to change the point of diversion, rather than adding an additional point of diversion.
4. The portion of the first right to be transferred is as follows:

Certificate:	468 in the name of CLYDE L. MCKELVEY (perfected under Permit S-221)
Use:	IRRIGATION of 38.0 ACRES
Priority Date:	FEBRUARY 7, 1910
Rate:	0.48 CUBIC FOOT PER SECOND

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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Source: CRICKET CREEK (AKA FIELDS CREEK), tributary to TROUT CREEK

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	34 E	WM	27	SW NW	20.0
38 S	34 E	WM	28	SE NE	18.0
Total Acres:					38.0

5. Certificate 468 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
38 S	34 E	WM	28	SE NE

6. Transfer Application T-11234 proposes to move the point of diversion approximately 5875 feet northwest (downstream) to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	34 E	WM	20	SW SE	857.39 FEET NORTH AND 1615.94 FEET WEST FROM THE NW CORNER OF SECTION 28

7. Application T-11234 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	34 E	WM	20	SE SE	0.02
38 S	34 E	WM	21	SW SW	0.02
38 S	34 E	WM	28	SW NE	6.30
38 S	34 E	WM	28	NE NW	7.28
38 S	34 E	WM	28	NW NW	20.31
38 S	34 E	WM	28	SW NW	0.13
38 S	34 E	WM	28	SE NW	3.65
38 S	34 E	WM	29	NE NE	0.29
Total Acres:					38.0

8. Notice of the application for transfer was published on April 26, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. On December 2, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11234 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 2, 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.

10. 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)]

11. 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.
12. A diversion structure and ditch 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-11234.
13. The proposed changes would not result in enlargement of the right.
14. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

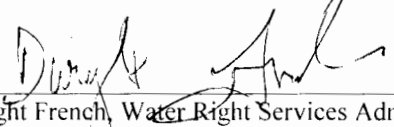
The changes in point of diversion and place of use proposed in Transfer Application T-11234 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-11234 is approved, the final order will include the following:

1. *The changes in point of diversion and place of use proposed in application T-11234 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 468 and any related decree.*
3. *Water right certificate 468 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. *Prior to diverting water, the water user shall install 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. The water user shall maintain the headgate as required by the Department.*

6. *The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at the point of diversion. If the Director notifies the water user to install a totalizing flow meter or other measuring device, the water user shall install such device specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meter or measuring device in good working order and shall allow the Watermaster access to the meter or measuring device.*
7. *Within one year after receiving written notification from the Oregon Department of Fish and Wildlife (ODFW) that a fish screen is required, the water user shall install a screen at the new point of diversion. The fish screening must meet ODFW's design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen meets ODFW's criteria. Once installed the water user shall maintain and operate the fish screen 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, 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.*
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 5 day of January, 2012.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

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