

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-11076, Jefferson County) PROPOSING APPROVAL OF A
) CHANGE IN POINT OF DIVERSION
) AND CHARACTER 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

ANN INGHAM
26248 METOLIUS MEADOWS DRIVE
CAMP SHERMAN OR 97759

Findings of Fact

Background

1. On May 12, 2010, ANN INGHAM filed an application to change the point of diversion and to change the character of use under Certificate 81669. The Department assigned the application number T-11076.
2. On October 17, 2011, the applicant amended the transfer application to include the transfer of the domestic use.
3. On January 23, 2012, the applicant amended the transfer application reducing the acreage to be transferred.
4. The portion of the right to be transferred is as follows:

Certificate: 81669 in the name of MARTIN HANSEN (confirmed by Deschutes River Decree
Use: DOMESTIC and IRRIGATION of 2.11 ACRES
Priority Date: 1888
Limit/Duty: The use is limited to 3.0 acre-feet per acre, measured at the point of diversion from the stream, which may be diverted at a rate of not to exceed

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.

ONE-SIXTIETH of one cubic foot per second during the irrigation season from May 1 to September 15, or its equivalent in case of rotation, measured at the point of diversion from the source.

Source: LAKE CREEK, tributary to the METOLIUS RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	9 E	WM	16	SE NE	POD 2 - 2320 FEET SOUTH AND 1120 FEET WEST FROM THE NE CORNER OF SECTION 16

Authorized Place of Use:

DOMESTIC AND IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
13 S	9 E	WM	16	NE SE	200	0.14
13 S	9 E	WM	16	NE SE	1400	0.28
13 S	9 E	WM	16	NE SE	1300	0.37
13 S	9 E	WM	16	NE SE	1200	0.35
13 S	9 E	WM	16	NE SE	1100	0.30
13 S	9 E	WM	16	NE SE	1000	0.02
13 S	9 E	WM	16	NE SE	900	0.30
13 S	9 E	WM	16	NE SE	800	0.35
Total						2.11

- Transfer Application T-11076 proposes to move the authorized point of diversion approximately 1170 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	9 E	WM	16	NW SE	449 FEET SOUTH AND 1755 FEET WEST FROM THE E¼ CORNER OF SECTION 16

- Transfer Application T-11076 also proposes to change the character of use for domestic use under this right and 0.14 acres of irrigation (Tax Lot 200) to pond maintenance.
- The use of water under the irrigation portion of this right for pond maintenance is limited to 0.42 acre-feet per year (0.14 acre x 3.0 acre-feet per year (afy) = 0.42 afy) during the irrigation season of May 1 to September 15.
- Use of more water per year than could maximally have been beneficially used for the original domestic use would constitute enlargement of the right, which is not allowable. Therefore, to avoid enlarging the right in the conversion to pond maintenance, an annual volume limit should be added to the right, based on the best available estimate of the maximum amount of water that could have been beneficially diverted and used for domestic purpose during a year.
- According to the U.S. Census Bureau (2005-2009 American Community Survey 5-Year Estimates), the average household size in Oregon is 2.49 persons. The *U.S. Dept. of Health, Education & Welfare, Public Health Service: Manual of Individual Water Supply Systems. Publication No. 24, Washington, D.C. 1962*, indicates the average single family per resident use is 75 gallons per day. There are 7 residences comprising the domestic use to be

transferred. The use of water under the domestic portion of this right for pond maintenance is limited to 1.46 acre-feet per year (afy) (7 residences x 2.49 persons per residence x 75 gallons per day (gpd) ÷ 24 hr/day ÷ 60 min/hr = 0.91 gallons per minute ÷ 226.76 acre feet/day x 365 days = 1.46 afy).

10. Notice of the application for transfer was published on May 25, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
11. On October 6, 2011, the Department issued a Preliminary Determination and mailed a copy to the applicant. The Preliminary Determination cover letter set forth a deadline of November 4, 2011, for the applicant to respond. The applicant disagreed with limiting the season of use for the pond maintenance to the irrigation season, and amended the application on October 17, 2011, to transfer the domestic portion of the water right to pond maintenance for year around use. On October 24, 2011, the Department issued a revised draft Preliminary Determination. On January 23, 2012, the applicant again amended the application reducing the acreage to be transferred. The applicant 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 diversion structure and ditch 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-11076.
15. The proposed changes as limited under Findings of Fact #7 and #9 would not result in enlargement of the right.
16. Instream water rights 59797 and 76416 exist for the reach of the river in which the authorized point of diversion would be moved upstream. The stream flows within the reach under Certificate 59797 are always met.
17. Instream flows authorized under Certificate 76416 are measured at Gage No. 14088000, upstream from where the authorized and proposed points of diversion are located. The instream flows are not always met at the gauging station for this instream water right. Lake Creek splits into three different reaches downstream from Suttle Lake and the gauging station. The reaches gain stream flow from various springs in the area. The best available information, including the Department's water availability calculation measured at the

mouths of Lake Creek, indicate that the instream right would be met throughout the year. Therefore, the upstream movement within the stream reach would not injure this instream water right.

Determination and Proposed Action

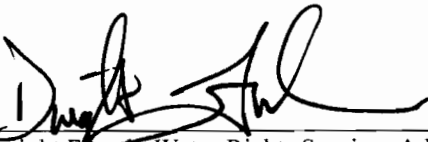
The change in point of diversion and change in character of use proposed in Transfer Application T-11076 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-11076 is approved, the final order will include the following:

- 1. The change in point of diversion and change in character of use proposed in Transfer Application T-11076 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 81669 and any related decree.*
- 3. Water right certificate 81669 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
- 4. The use of water for pond maintenance use under the irrigation portion of the right shall not exceed a total quantity diverted of 0.42 acre foot per year and shall not exceed a rate of diversion of ONE-SIXTIETH of one cubic foot per second during the irrigation season from May 1 to September 15, or its equivalent in case of rotation, measured at the point of diversion from the source.*
- 5. The use of water for pond maintenance under the domestic portion of the right shall not exceed a total quantity diverted of 1.46 acre feet per year, measured at the point of diversion from the source.*
- 6. 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.*
- 7. 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.*

8. *The water user shall maintain the existing headgate and shall make such improvements as may be required by the Department.*
9. *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.*
10. *The former place of use of the transferred right shall no longer receive water for irrigation use under the right.*
11. *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 changes and full beneficial use of the water.*
12. *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 January, 2012.



Dwight French, Water Rights 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@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.