

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11304, Douglas County	)	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

MELVIN A. and CAROL M. JAMES
6385 ROBERTS CREEK RD
ROSEBURG, OR 97470

Findings of Fact

Background

1. On September 28, 2011, MELVIN A. JAMES filed an application for an additional point of diversion under Certificate 82504. On January 31, 2011, CAROL M. JAMES signed the application. The Department assigned the application number T-11304.
2. The right to be transferred is as follows:

Certificate: 82504 in the name of MELVIN B. HARRIS (confirmed by Roberts Creek Decree)

Use: DOMESTIC AND LIVESTOCK (TRACT 1) AND IRRIGATION OF 14.68 ACRES (TRACT 2)

Priority Date: 1856 (TRACT 1) AND 1871 (TRACT 2)

Rate: 0.193 CUBIC FOOT PER SECOND (CFS); BEING 0.0095 CFS for TRACT 1 AND 0.1835 CFS FOR TRACT 2

Source: COOPER SPRING AND ROBERTS CREEK, tributaries of the SOUTH UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
28 S	5 W	WM	22	NE SE

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 Place of Use:

DOMESTIC AND LIVESTOCK				
Twp	Rng	Mer	Sec	Q-Q
28 S	5 W	WM	22	NW¼

IRRIGATION				
Twp	Rng	Mer	Sec	Q-Q
28 S	5 W	WM	22	NE NW
28 S	5 W	WM	22	NW NW
28 S	5 W	WM	22	SW NW

3. Certificate 82504 does not describe the location of the point of diversion; however, information is available from prior transfers and the Certified Water Right Examiner indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
28 S	5 W	WM	22	NE SE	20 FEET WEST AND 1280 FEET SOUTH OF THE W¼ CORNER OF SECTION 23

4. Certificate 82504 does not describe the exact location of the place of use for the irrigation portion of the right. Information is available from the applicant and Certified Water Right Examiner indicating the place of use is located as follows:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
28 S	5 W	WM	22	NE NW	7.50
28 S	5 W	WM	22	NE NW	0.30
28 S	5 W	WM	22	SW NW	6.88
TOTAL					14.68

5. Transfer Application T-11304 proposes an additional point of diversion approximately 1400 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
28 S	5 W	WM	23	NE SW	1260 FEET SOUTH AND 1380 FEET EAST FROM THE W¼ CORNER OF SECTION 23

6. Notice of the application for transfer was published on October 4, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On January 10, 2012, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11304 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of February 10, 2012, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
8. 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)]

9. 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.
10. 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-11304.
11. The proposed change would not result in enlargement of the right.
12. 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-11304 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.

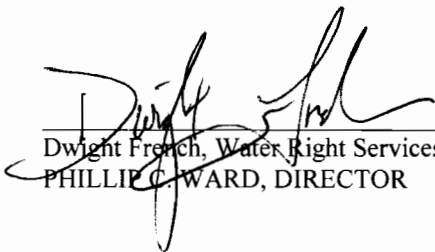
If Transfer Application T-11304 is approved, the final order will include the following:

1. *The additional point of diversion proposed in Transfer Application T-11304 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 82504 and any related decree.*
3. *Water right certificate 82504 is cancelled.*
4. *Water must be available at the original point of diversion before water use may occur from the additional point of diversion at Cooper Spring.*
5. *The combined quantity of water diverted at the additional point of diversion at Cooper Spring, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
6. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a flow restrictor and valve on the domestic/stock supply line for a rate of 4.25 gallons per minute, and a flow meter and valve on the irrigation pipeline, or, with prior approval of the Director, other suitable measuring devices, 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 3 day of February 2012.


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@wrds.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.