



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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April 4, 2012

VIA E-MAIL

Applicant

MICHAEL AND LAURA FEIGNER
4019 NE FERN LANE
MADRAS, OR 97741

SUBJECT: Water Right Transfer Application T-11292

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11292. 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 and in the Madras Pioneer newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a 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. The protest period will end 30 days after the last date of newspaper publication.

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@wrd.state.or.us if I may be of assistance.

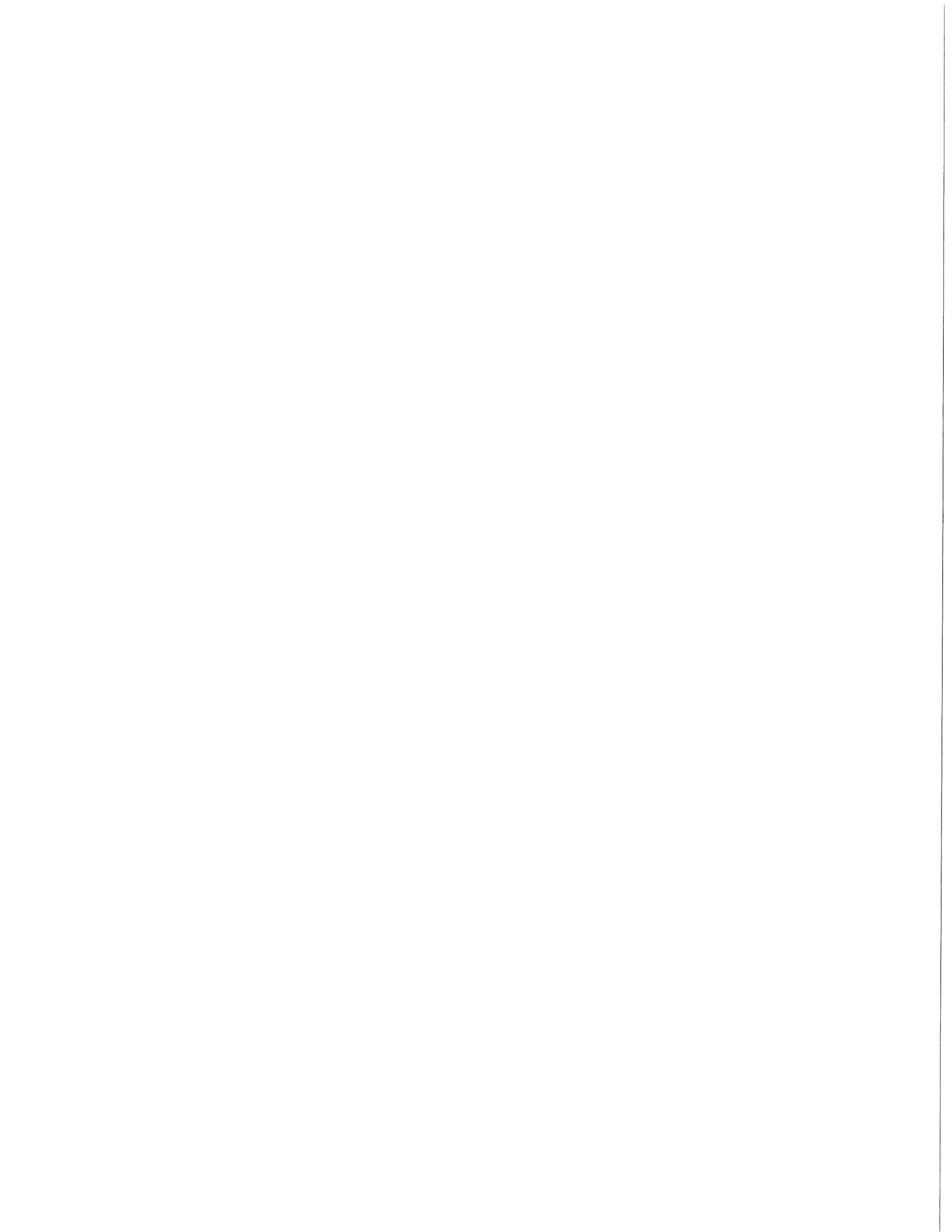
Sincerely,

Dorothy Pedersen
Transfer Program Advisor
Transfer and Conservation Section

cc: T-11292
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)

encs





Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 9 S | 16 E | WM | 24 | NE SW | 200 FEET SOUTH AND 600 FEET WEST FROM CENTER OF SECTION 24 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 9 S | 16 E | WM | 24 | SW NW | 0.4 |
| 9 S | 16 E | WM | 24 | SE NW | 11.1 |

3. Certificate 72479 contains a scrivener's error. Certificate 72479 incorrectly identifies the total acres to be irrigated as 114.7 acres. The tabulation of acres listed in Certificate 72479 equals 129.7 acres.
4. Certificate 72479 describes a portion of the authorized place of use as 0.4 acre in the SWNW and 11.1 acres in the SENW of Section 24, Township 9 South, Range 16 East, WM., Jefferson County, Oregon.
 - a. The transfer application depicts the 0.4 acre and the 11.1 acres under Certificate 72479 as all being in the SENW, Section 24, Township 9 South, Range 16 East, WM..
 - b. On June 28, 2011, the local watermaster met with the landowner and CWRE. They completed a new survey of the land that has always been irrigated under the right. The original survey was not tied into any referenced survey corners and did not coincide with the GPS survey completed by the watermaster and CWRE, leading the Department to conclude that the land to which the right has always been appurtenant should be re-described based on current understanding of how the PLS lines overlies the land.
 - c. The following table lists the place of use as described in existing certificate 72479 and a proposed re-description based on the above findings:

| Original Description of Place of Use | | Proposed Re-Description of Place of Use | |
|---|-------|---|-------|
| $\frac{1}{4}$ - $\frac{1}{4}$ | Acres | $\frac{1}{4}$ - $\frac{1}{4}$ | Acres |
| SW NW | 0.4 | SE NW | 11.5 |
| SE NW | 11.1 | | |
| Township <u>9 S</u> , Range <u>16 E</u> , Section <u>24</u> | | | |

5. Transfer Application T-11292 proposes an additional point of diversion approximately 1850 feet downstream to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 9 S | 16 E | WM | 24 | NE NW | 1458 FEET NORTH AND 1240 FEET WEST FROM THE CENTER 1/4 OF SECTION 24 |

6. Notice of the application for transfer was published on September 13, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On February 17, 2012, the Department sent a letter requesting additional information.
8. On February 29, 2012, the Department received a new map and clarification regarding the re-description.
9. 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. Listed fish species are not present at the point of diversion, the originating water right diversion is not screened, cost-share funds are not currently available, and the proposed diversion may be eligible for ODFW's cost-share program. A grace period of two years is appropriate until such time as cost share funds become available to assist in the construction of a fish screening and/or by-pass device. If cost share funds do not become available, the water user must screen within the indicated time period regardless of the availability of cost share funding.
10. On March 2, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11292 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 1, 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.

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

8. Water has been used within the five-year period prior to submittal of the transfer application 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.
9. A pump, pipeline, 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-11292.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights

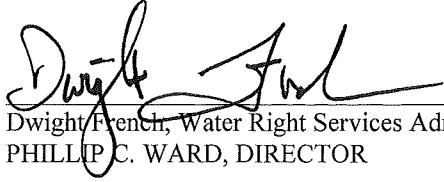
Determination and Proposed Action

The additional point of diversion proposed in Transfer Application T-11292 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-11292 is approved, the final order will include the following:

1. *The additional point of diversion proposed in application T-11292 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 72479 and any related decree.*
3. *Water right certificate 72479 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 additional point of diversion, 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.*
5. *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 the new point of diversion.*
 - b. *The water user shall maintain the meter or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring devices; provided however, where the meter or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Within two years after the date of this order, 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. The water user may withdraw water at the new point of diversion without screening or by-pass devices until two years after the date of this order. 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.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2014**. 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.*
8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 2 day of April, 2012.



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

This Preliminary Determination was prepared by Joel Plahn and Dorothy Pedersen. If you have questions about the information in this document, you may reach Dorothy at 503-986-0890 or Dorothy.I.Pedersen@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.

