



**Oregon**  
Kate Brown, Governor

**Water Resources Department**  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
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May 21, 2015

OTTO AND FAY KELLER  
13878 SE MOUNTAIN CREST DRIVE  
HAPPY VALLEY, OR 97086

SUBJECT: Water Right Transfer Application T-11948

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11948. 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 Central Oregonian 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 [Tracy.L.Fox@wr.d.state.or.us](mailto:Tracy.L.Fox@wr.d.state.or.us) or 503 986-0827 if I may be of assistance.

Sincerely,

Ms. Tracy Fox  
Transfer Specialist  
Transfer and Conservation Section

cc: T-11948  
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)  
Kaid McKay, Agent for the applicant and CWRE (*via e-mail*)

enclosures

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11948, Crook County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF DIVERSION
	)	AND PLACE OF USE

**Authority**

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicants**

OTTO AND FAY KELLER  
13878 SE MOUNTAIN CREST DR  
HAPPY VALLEY, OR 97086

**Findings of Fact**

1. On December 22, 2014, OTTO AND FAY KELLER filed an application to change the point of diversion, add additional points of diversion and to change the place of use under Certificate 87644. The Department assigned the application number T-11948.
2. Notice of the application for transfer was published on January 6, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 13, 2015, the Department contacted the applicants' agent by telephone to notify them of a minor deficiency on the transfer map and to clarify with the agent that this is not an additional point of diversion, it is just a point of diversion change.
4. On March 6 and 10, 2015, an amended application page and amended transfer map were received.
5. On March 20, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11948 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 20, 2015, for the applicants to respond.

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.

6. The applicants requested some that the Department proceed with issuance of a Preliminary Determination with some amendments to the draft Preliminary Determination, including that the date for full beneficial use be extended to October 1, 2017. The applicants provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

7. The right to be transferred is as follows:

**Certificate:** 87644 in the name of OTTO C. AND FAY M. KELLER (confirmed by Crooked River Decree (F))  
**Use:** IRRIGATION OF 22.0 ACRES, LIVESTOCK AND DOMESTIC  
**Priority Date:** 1885  
**Rate:** 0.27 CUBIC FOOT PER SECOND (CFS)  
**Source:** SOUTH FORK CROOKED RIVER, a tributary to the CROOKED RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
18 S	23 E	WM	7	SE SW	WHITE SULPHUR DITCH: 900 FEET NORTH AND 600 FEET WEST FROM THE SE CORNER OF THE SW1/4 OF SECTION 7

**Authorized Place of Use:**

IRRIGATION, LIVESTOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
18 S	22 E	WM	1	SE SE	22.0

8. Certificate 87644 does not describe the duty of the right, however information is available from the Crooked River Decree indicating that the duty allowed for the right is 4.0 acre-feet per acre.
9. Certificate 87644 does not describe the rate of the right, however information is available from the Crooked River Decree indicating that the rate allowed for the right is one-eightieth (1/80) of CFS per acre.
10. Certificate 87644 does not describe the irrigation season of the right, however information is available from the Crooked River Decree indicating that the irrigation season allowed for the right is February 1 through December 1.
11. Transfer Application T-11948 proposes to move the authorized point of diversion downstream from the current authorized point of diversion the approximate distances as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance
18 S	22 E	WM	1	SE SE	POD 1: 875 FEET NORTH AND 450 FEET WEST FROM THE SE CORNER OF SECTION 1, T18S, R22E	1.1 miles
18 S	23 E	WM	6	SW SW	POD 2: 125 FEET NORTH AND 575 FEET EAST FROM THE SE CORNER OF SECTION 1, T18S, R22E	1.1 miles

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance
18 S	22 E	WM	1	SW SE	POD 3: 890 FEET NORTH AND 2025 FEET WEST FROM THE SE CORNER OF SECTION 1, T18S, R22E	1.0 mile

12. Transfer Application T-11948 also proposes to change the place of use of the right to:

DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
18 S	22 E	WM	1	SW SE

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
18 S	22 E	WM	1	NW SE	2.63	pou/pod
18 S	22 E	WM	1	SW SE	2.23	pou/pod
18 S	22 E	WM	1	SE SE	10.14	pou
18 S	23 E	WM	6	SW SW	7.00	pou/pod
Total pou/pod change:					11.86	
Total pod change:					22.00	

LIVESTOCK				
Twp	Rng	Mer	Sec	Q-Q
18 S	22 E	WM	1	SW SE
18 S	22 E	WM	1	SE SE

13. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

14. 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.
15. 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-11948.
16. The proposed changes would not result in enlargement of the right.
17. The proposed changes would not result in injury to other water rights.

**Determination and Proposed Action**

The change in point of diversion and change in place of use proposed in Transfer Application T-11948 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-11948 is approved, the final order will include the following:*

- 1. The change in point of diversion and change in place of use proposed in Transfer Application T-11948 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 87644 and any related decree.*
- 3. Water right Certificate 87644 is cancelled.*
- 4. The quantity of water diverted at the new points 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 each new 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.*
- 6. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

*The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.*
- 7. The former place of use of the transferred right shall no longer receive water under the right.*
- 8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before October 1, 2017. 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.*

9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 21 day of May, 2015.

  
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Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

This Preliminary Determination was prepared by Tracy Fox. If you have questions about the information in this document, you may reach me at 503 986-0827 or Tracy.L.Fox@wr.d.state.or.us.

Protests should be addressed to the Water Rights Services Division, Oregon Water Resources Department, 725 Summer Street, Suite A, Salem, OR 97301-1266.