



Oregon

Kate Brown, Governor

Water Resources Department

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July 31, 2015

VIA E-MAIL

MICHAEL KILPATRICK
PO BOX A
MOUNT VERNON, OR 97865
Kilpatricks@hotmail.com

SUBJECT: Water Right Transfer Application T-11865

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11865. 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 Blue Mountain Eagle 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 541-278-5456 or Ken.D.Dowden@wrdd.state.or.us if I may be of assistance.

Sincerely,


Ken Dowden
Transfer Specialist
NC REGION

cc: T-11865
Eric W. Julsrud, District 4 Watermaster (via e-mail)
George and Pricilla Meredith, Landowner (via e-mail)
Robert D. Bagett, CWRE # 009(via e-mail)

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

In the Matter of Transfer Application)
T-11865, Grant County)
)
) **PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF
CHANGES IN PLACE OF USE AND
POINTS OF DIVERSION**

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.

Applicant

MICHAEL KILPATRICK
P.O. BOX A
MT. VERNON, OR 97865

Findings of Fact

1. On July 23, 2014, Michael Kilpatrick filed an application to change the place of use and points of diversion under Certificates 25439 and 82401. The Department assigned the application number T-11865.
2. Notice of the application for transfer was published on August 5, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The portion of the first right to be transferred is as follows:
Certificate: 25439 in the name of CASPER KOEHLER (confirmed by John Day River Decree (F))
Use: IRRIGATION of 5.30 ACRES
Priority Date: 1878
Limit/Duty: limited to an amount actually beneficially used for irrigation, and shall not exceed ONE-FORTIETH of one cubic foot per second per acre irrigated to June 1 and ONE-EIGHTIETH of one cubic foot per second per acre thereafter; further limited to 1.0 acre-foot per calendar month to June 1 and 4.0 acre-foot per acre during the season April 1 to September 30, measured at the point of diversion
Source: FALL CREEK, tributary to BEECH CREEK

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.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	30 E	WM	14	NE SW	2.60
13 S	30 E	WM	14	NW SW	2.70
TOTAL:					5.30

4. Certificate 25439 does not describe the point of diversion location that serves these lands on Fall Creek. However, the Department's 1927 adjudication map identifies a diversion dam structures and ditch within the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 14, T 13 S, R 30 E, W.M.. In addition, information is available from the current Certified Water Rights Examiner's map indicating that the original diversion points are located as follows:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
13 S	30 E	WM	14	NW SW	FALL CREEK DITCHES

5. Transfer Application T-11865 proposes to change the place of use of the right to:

Proposed Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	30 E	WM	14	NW SW	1.15
13 S	30 E	WM	15	NE SE	4.15
TOTAL:					5.30

6. Transfer Application T-11865 also proposes to change the point of diversion upstream approximately 1950 feet to:

Proposed Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
13 S	30 E	WM	14	SW NW	POD #3 - 3740 FEET NORTH AND 1580 FEET WEST FROM THE S $\frac{1}{4}$ CORNER OF SECTION 14

7. The portion of the second right to be transferred is described as follows:

Certificate: 82401 in the name of ROY KILPATRICK (perfected under Permit S-48299)

Use: IRRIGATION of 5.30 ACRES

Priority Date: OCTOBER 14, 1983

Rate: 0.134 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: FALL CREEK, tributary to BEECH CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
13 S	30 E	WM	14	SW NW	3400 FEET NORTH AND 1050 FEET EAST FROM THE SW CORNER OF SECTION 14

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	30 E	WM	14	NW SW	1.15
13 S	30 E	WM	15	NE SE	4.15
TOTAL:					5.30

8. Certificate 82401 describes the point of diversion location on Fall Creek. The Department's Final Proof survey of 1998 for this water right was completed using an older aerial photograph, and placed the POD perhaps further downstream approximately 350 feet from the actual POD for this water right. In addition, information is available from the current Certified Water Rights Examiner's map based on an actual recent survey indicating that the original authorized point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
13 S	30 E	WM	14	NW SW	3740 FEET NORTH AND 1580 FEET WEST FROM THE S $\frac{1}{4}$ CORNER OF SECTION 14

9. Transfer Application T-11865 proposes to change the place of use of the 5.3 acres described above to:

Proposed Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	30 E	WM	14	NE SW	2.60
13 S	30 E	WM	14	NW SW	2.70
TOTAL:					5.30

10. Transfer application T-11865 also proposes to change the point of diversion downstream approximately 1950 feet to:

Proposed Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
13 S	30 E	WM	14	NW SW	POD #1 and POD #2 - 1860 FEET NORTH AND 1610 FEET WEST FROM THE S $\frac{1}{4}$ CORNER OF SECTION 14

11. The Oregon Department of Fish and Wildlife (ODFW) has determined that fish screens are necessary at the new points of diversion to prevent fish from entering the diversions and that the diversions are not currently equipped with appropriate fish screens. These diversions may be eligible for screening cost-share funds.
12. On March 31, 2015, the Department mailed the applicant a draft copy of the Preliminary Determination proposing to approve Transfer Application T-11865. The draft document set forth a deadline of April 30, 2015 for the applicant to respond. On April 23, 2015, the applicant requested the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that he is authorized to pursue the transfer.

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

13. Water has been used within the five-year period prior to submittal of the transfer application T-11865 according to the terms and conditions of the right. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
14. Diversion structures and ditches sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11865.
15. The proposed changes would not result in enlargement of the rights.
16. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The change in place of use and change in points of diversion proposed in Transfer Application T-11865 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-11865 is approved, the final order will include the following:

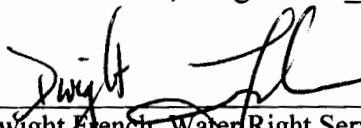
1. *The changes in place of use and points of diversion proposed in Transfer Application T-11865 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 25439 and 82401 and any related decree.*
3. *Water right Certificates 25439 and 82401 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
4. *The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original points 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 point of diversion (new and existing) and 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 places of use of the transferred rights shall no longer receive water under the rights.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. 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, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 4 day of August 2015.


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

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@wrdd.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.