



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

April 4, 2016

MARY MARCIEL
54874 HIGHWAY 26
MT VERNON OR 97865

SUBJECT: Water Right Transfer Application T-11981

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11981. 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 503-986-0886 or Patrick.K.Starnes@ wrd.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application T-11981
Eric Julsrud, Watermaster 4 District (*via e-mail*)
Sara Haynes, Agent for the applicant (*via e-mail*)

encs

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11981, Grant County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF
)	APPROPRIATION

Authority

Oregon Revised Statutes (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implements the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

Applicant

MARY MARCIEL
54874 HIGHWAY 26
MT VERNON OR 97865

Agent

SARA HAYNES
FARALLON CONSULTING LLC
1940 VALLEY AVENUE
BAKER CITY OR 97814

Findings of Fact

1. On February 9, 2015, Mary Marciel filed an application to change the point of appropriation under Certificate 66815. The Department assigned the application number T-11981.
2. Notice of the application for transfer was published on February 17, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 25, 2016, the agent for the applicant submitted a new revised application and map to clarify the place of use and revised the location of a proposed well.

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.
--

4. The right to be transferred is as follows:

Certificate: 66815 in the names of FRANCIS L. AND MARY Y. MARCIEL (perfected under Permit G-9305)

Use: SUPPLEMENTAL IRRIGATION OF 96.9 ACRES

Priority Date: APRIL 25, 1980

Rate: 1.20 CUBIC FEET PER SECOND (CFS)

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

Source: ONE WELL within the RILEY CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	30 E	WM	30	NE SW	2010 FEET NORTH AND 1820 FEET EAST FROM THE SW CORNER OF SECTION 30

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	30 E	WM	30	NW NE	2.9
13 S	30 E	WM	30	SW NE	22.0
13 S	30 E	WM	30	NE NW	4.4
13 S	30 E	WM	30	SE NW	16.2
13 S	30 E	WM	30	NE SW	25.0
13 S	30 E	WM	30	SE SW	19.2
13 S	30 E	WM	30	NE SE	6.0
13 S	30 E	WM	31	NE NW	1.2
Total:					96.9

5. Certificate 66815 contains a scrivener's error in its description of the quarter quarter breakdown for the 6.0 acres described above in Section 30. The designation of the NE¹/₄ SE¹/₄ is in error. Based on the Department's original Final Proof survey map and the applicant's Certified Water Rights Examiner's (Kerns/2015) current map based on a recent field visit and subsequent survey more precisely indicates that the 6.0 acres is located within the NW¹/₄ SE¹/₄. Certificate 66815 should be corrected to reflect the description of the 6.0 acres within the NW¹/₄ SE¹/₄, Section 30.

6. Transfer Application T-11981 proposes to change the point of appropriation southeast approximately 250 feet to proposed Well #1, north approximately 1830 feet to proposed Well #2, and north approximately 1300 feet to proposed Well #3. The proposed wells are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	30 E	WM	30	NE SW	WELL #1 - 1925 FEET NORTH AND 2120 FEET EAST FROM THE SW CORNER OF SECTION 30 <i>(proposed variation of 100 ft radius per each Northerly/Easterly distances noted)</i>
13 S	30 E	WM	30	SE NW	WELL #2 - 3850 FEET NORTH AND 2310 FEET EAST FROM THE SW CORNER OF SECTION 30 <i>(proposed variation of 100 ft radius per each Northerly/Easterly distances noted)</i>
13 S	30 E	WM	30	SE NW	WELL #3 - 3370 FEET NORTH AND 2090 FEET EAST FROM THE SW CORNER OF SECTION 30 <i>(proposed variation of 100 ft radius per each Northerly/Easterly distances noted)</i>

7. On February 26, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11981 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 25, 2016, for the applicant to respond. The agent for the applicant requested the Department pursue continue with the transfer and proceed with issuance of the Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer. The agent also requested additional time for the applicant to complete the transfer. The new completion date is October 1, 2019.

Transfer Review Criteria (OAR 690-380-4010)

8. Pursuant to OAR 690-380-2110(2), the Department has made a finding, based on the proposed construction information provided by the applicant, that the proposed change in point of appropriation will develop the same aquifer (source) as that of the existing, original authorized well (GRAN 366/365deepen/50927alt).
9. Water has been used within the last five years prior to the submittal of Transfer Application T-11981 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 well, 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-11981.
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.
13. All other application requirements are met.

Determination and Proposed Action

The change in point of appropriation proposed in Transfer Application T-11981 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-11981 is approved, the final order will include the following:

- 1. The change in point of appropriation proposed in Transfer Application T-11981 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 66815 and any related decree.*
- 3. Water right Certificate 66815 is cancelled.*
- 4. The quantity of water diverted at the new point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
- 5. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
- 6. 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 appropriation.*
 - b. The water user shall maintain the meters or measuring device 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 device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
- 7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2019**. 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.*

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

Dated at Salem, Oregon this 5 day of April 2016.



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@wrp.state.or.us.

NOTICE TO ACTIVE DUTY SERVICE MEMBERS: Active duty service members have a right to stay these proceedings under the federal Service members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

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.