



**Oregon**  
Kate Brown, Governor

**Water Resources Department**  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
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October 2, 2017

VIA E-MAIL

MICHAEL E. AND PEGGY A. MCFARLAND  
14809 WESTSIDE RD  
LAKEVIEW, OR 97630

SUBJECT: Water Right Transfer Application T-12278

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12278. 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 Lake County Examiner 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 503-986-0806 or [arla.l.heard@oregon.gov](mailto:arla.l.heard@oregon.gov) if I may be of assistance.

Sincerely,

Arla L Heard  
Transfer Specialist  
Transfer and Conservation Section

cc: T-12278  
Brian M. Mayer, District 12 Watermaster (*via e-mail*)  
Anderson Engineering And Surveying Inc., Agent for the applicant (*via e-mail*)

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

In the Matter of Transfer Application            )  
T-12278, Lake County                            )  
  )  
  )    **PRELIMINARY DETERMINATION  
PROPOSING APPROVAL OF  
ADDITIONAL POINTS OF DIVERSION  
AND A CHANGE IN PLACE OF USE**

**Authority**

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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 Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

**Applicant**

MICHAEL E. AND PEGGY A. MCFARLAND  
14809 WESTSIDE RD  
LAKEVIEW OR 97630

**Findings of Fact**

1. On February 12, 2016, MICHAEL E. AND PEGGY A. MCFARLAND filed an application for additional points of diversion and to change the place of use under Certificate 65633. The Department assigned the application number T-12278.
2. Notice of the application for transfer was published on March 1, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 2, 2017, the Department notified the applicant’s agent by telephone of deficiencies in the transfer application and the transfer map. Specifically both the application page 9 table 2 and the transfer map did not distinguish the source of water on the “from” or the “to” lands which is identified on the certificate.
4. On April 24, 2017, the agent submitted an amended application page and application map sufficient to resolve the deficiencies.
5. On June 16, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12278 to the applicant and emailed a copy to the agent. The draft Preliminary Determination cover letter set forth a deadline of July 12, 2017, for the applicant to respond.
6. On July 7, 2017 the applicant responded by email and accepted the revised draft Preliminary Determination.

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.

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

**Certificate:** 65633 in the name of R.T. RENNER (perfected under Permit S-22471)  
**Use:** FOR THE PURPOSE OF IRRIGATING 168.6 ACRES FROM DREWS CREEK SLOUGH AND 39.5 ACRES FROM DREWS CREEK AND DREWS CREEK SLOUGH  
**Priority Dates:** SEPTEMBER 8, 1941 FOR 3.34 CUBIC FEET PER SECOND (CFS) AND MAY 20, 1953 FOR 0.63 CFS  
**Rate:** 2.68 CFS being 0.55 from Drews Creek, and 2.13 from Drew Creek Slough  
**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) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year and shall be further limited to a diversion of not to exceed 2.68 CFS.  
**Sources:** DREWS CREEK AND DREWS CREEK SLOUGH, tributaries of GOOSE LAKE

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	19 E	WM	20	SE NW	POD 1 - NORTH 28 DEGREES 36 MINUTES EAST, 3654.3 FEET FROM THE SW CORNER OF SECTION 20
40 S	19 E	WM	20	SW NE	POD 2 - NORTH 35 DEGREES 41 MINUTES 30 SECONDS EAST, 4803 FEET FROM THE SW CORNER OF SECTION 20
40 S	19 E	WM	20	NE SE	POD 3 - NORTH 16 DEGREES 31 MINUTES WEST, 1931.9 FEET FROM THE SE CORNER OF SECTION 20
40 S	19 E	WM	20	NE SE	POD 4 - NORTH 5 DEGREES 12 MINUTES EAST, 148.5 FEET FROM THE DREWS CR HEADGATE 2 IN SECTION 20

**Authorized Place of Use:**

IRRIGATION						
DREWS CREEK AND DREWS CREEK SLOUGH						
Twp	Rng	Mer	Sec	Q-Q	Acres	Priority Date
40 S	19 E	WM	20	NE SE	4.70	1941
40 S	19 E	WM	21	NW SW	8.60	1953
40 S	19 E	WM	21	SW SW	16.00	1941
40 S	19 E	WM	21	SE SW	10.20	1941
Total					39.50	

IRRIGATION						
DREWS CREEK SLOUGH						
Twp	Rng	Mer	Sec	Q-Q	Acres	Priority Date
40 S	19 E	WM	20	SE NW	5.20	1941
40 S	19 E	WM	20	NE SW	20.00	1941
40 S	19 E	WM	20	NE SW	10.00	1953
40 S	19 E	WM	20	SE SW	22.00	1941
40 S	19 E	WM	20	NW SE	10.00	1941
40 S	19 E	WM	20	NW SE	20.40	1953
40 S	19 E	WM	20	SW SE	30.00	1941

IRRIGATION						
DREWS CREEK SLOUGH						
Twp	Rng	Mer	Sec	Q-Q	Acres	Priority Date
40 S	19 E	WM	20	SW SE	5.00	1953
40 S	19 E	WM	20	SE SE	30.00	1941
40 S	19 E	WM	20	SE SE	4.00	1953
40 S	19 E	WM	21	SW SW	12.00	1941
Total					168.60	

8. Transfer Application T-12291 proposes additional points of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Authorized Point of Diversion
40 S	19 E	WM	22	NE SW	POD 5 - 2490 FEET NORTH AND 2466 FEET EAST FROM THE SW CORNER OF SECTION 22	POD 1 – 2.0 Miles POD 2 – 2.2 Miles POD 3 – 1.6 Miles POD 4 – 1.6 Miles
40 S	19 E	WM	27	NE NW	POD 6 - 75 FEET SOUTH AND 2230 FEET EAST FROM THE SW CORNER OF SECTION 22	POD 1 – 2.1 Miles POD 2 – 2.2 Miles POD 3 – 1.6 Miles POD 4 – 1.6 Miles

9. Transfer Application T-12291 also proposes to change the place of use of the right to:

IRRIGATION						
DREWS CREEK AND DREWS CREEK SLOUGH						
Twp	Rng	Mer	Sec	Q-Q	Acres	Priority Date
40 S	19 E	WM	27	NW NE	11.98	1941
40 S	19 E	WM	27	NW NE	8.60	1953
40 S	19 E	WM	27	NE NW	9.02	1941
40 S	19 E	WM	27	SE NW	9.90	1941
Total					39.50	

IRRIGATION						
DREWS CREEK SLOUGH						
Twp	Rng	Mer	Sec	Q-Q	Acres	Priority Date
40 S	19 E	WM	22	SW NE	18.87	1941
40 S	19 E	WM	22	SE NE	30.95	1941
40 S	19 E	WM	22	NE SW	2.72	1941
40 S	19 E	WM	22	NE SE	32.09	1941
40 S	19 E	WM	22	NW SE	39.19	1941
40 S	19 E	WM	22	SW SE	2.73	1941
40 S	19 E	WM	22	SE SE	2.65	1941
40 S	19 E	WM	22	SE SE	5.88	1953
40 S	19 E	WM	27	NW NE	10.73	1953
40 S	19 E	WM	27	SW NE	22.79	1953
Total					168.60	

10. 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. 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 screen. 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.

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

11. Water has been used within the last five years. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
12. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-12278.
13. The proposed changes as conditioned would not result in enlargement of the right.
14. The proposed changes would not result in injury to other water rights.

**Determination and Proposed Action**

The additional points of diversion and change in place of use proposed in Transfer Application T-12278 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.

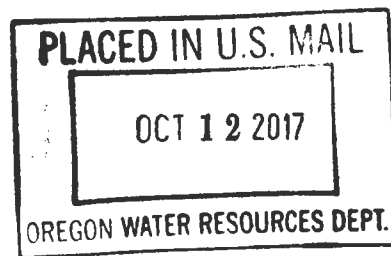
*If Transfer Application T-12278 is approved, the final order will include the following:*

1. *The additional points of diversion and change in place of use proposed in Transfer Application T-12278 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 65633 and any related decree.*
3. *Water right Certificate 65633 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 points of diversion, together with that diverted at the original 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 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 a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.*
7. *By October 1, 20\_\_ [Within two years after the date of this order] the water user shall install an approved fish screen at the new point of diversion. The water user may withdraw water at the new point of diversion without a screen until October 1, 20\_\_. The water user shall provide to 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 maintain and operate 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.*
8. *The former place of use of the transferred right shall no longer receive water under the right.*
9. *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.*
10. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 9 day of October, 2017.

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



This Preliminary Determination was prepared by Arla Heard. If you have questions about the information in this document, you may reach me at 503-986-0860 or [Arla.L.Heard@oregon.gov](mailto:Arla.L.Heard@oregon.gov).

*Protests should be addressed to the attention of Water Rights Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.*

**Notice Regarding Service Members:** Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>