

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11669, Malheur County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF DIVERSION
)	AND 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

GREG AMARAL
1606 AMARAL COURT
FAIRFIELD, CA 94534
amaralranch@aol.com

Findings of Fact

1. On September 6, 2013, GREG AMARAL filed an application to change the point of diversion and to change the place of use under Certificate 7049. The Department assigned the application number T-11669.
2. Notice of the application for transfer was published on October 8, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. There is any underlying permit S-29882 within the proposed place of use. The place of use and type of use of this permit will be clarified when the claim of beneficial use is submitted, resolving any conflicts with T-11669.
4. The proposed place of use is within Vale and Warm Springs Irrigation District boundaries. Vale Irrigation District requested a condition that the new proposed place of use under C-7049 (1884 priority date) be subordinate to the priority dates for the district rights under C-74080 (January 11, 1927 priority date) and C-74081 (November 29, 1945 priority date). If the place of use changes in the future it will retain its original priority status and will be re-evaluated if necessary. The applicant consented to this condition.

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.

5. On September 11, 2017, the agent submitted an e-mail which acknowledged and agreed to additional conditions making the senior right Certificate 7049 subordinate to the junior permit S-29882 on the proposed place of use.
6. On September 11, 2017, the department received the affidavit of consent for partial diminution of a water right.
7. On September 13, 2017, the department received an amended map with the CWRE official stamp.
8. On September 29, 2017, the department received a request to terminate temporary transfer T-11668 once the final order is issued for this transfer, T-11669.
9. On September 20, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11669 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 20, 2017, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
10. The portion of the right to be transferred is as follows:

Certificate: 7049 in the name of ELLA WOODRUFF (confirmed by Malheur River Decree)
Use: IRRIGATION of 65.0 ACRES
Priority Date: 1884
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 1.5 acre feet per acre in any 30 day period prior to June 1st, 1.0 acre foot per acre in any 30 day period after June 1st, of each year or 3.0 acre feet per acre during any season, diverted at a rate not to exceed ONE-TWENTIETH of one cubic foot per second per acre.
Source: BULLY CREEK, tributary to the MALHEUR RIVER

Authorized Point of Diversion:

DITCH NAME
HARRIS DITCH

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
19 S	44 E	WM	4	NE NW	21.0
19 S	44 E	WM	4	NW NW	40.0
19 S	44 E	WM	4	SW NW	4.0
Total					65.0

11. Transfer Application T-11669 proposes to move the authorized point of diversion approximately 2.5 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
19 S	44 E	WM	4	NE NW	3	55 FEET SOUTH AND 1730 FEET EAST FROM THE NW CORNER OF SECTION 4

12. Transfer Application T-11669 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Use
19 S	44 E	WM	4	NE NW	3	7.7	Primary
19 S	44 E	WM	4	NE NW	3	4.3	Supplemental
19 S	44 E	WM	4	NW NW	4	23.3	Primary
19 S	44 E	WM	4	NW NW	4	15.7	Supplemental
19 S	44 E	WM	4	SW NW		1.0	Supplemental
19 S	44 E	WM	5	NE NE	1	12.0	Primary
19 S	44 E	WM	5	SE NE		1.0	Primary
Total						65.0	

13. The applicant also proposes to diminish a portion of the transferred right to supplemental irrigation which is identified in the table above.
14. The Oregon Department of Fish and Wildlife has determined that the diversion is not currently equipped with an appropriate fish screen, but a fish screen may be required in the future at the new point of diversion to prevent fish from entering the diversion.

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

15. 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.
16. A diversion structure and ditch 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-11669.
17. The proposed changes would not result in enlargement of the right.
18. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

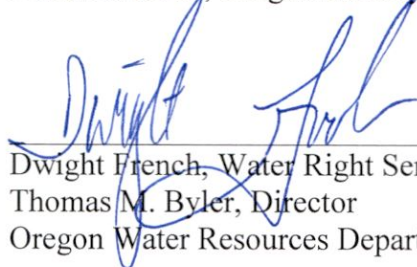
The change in point of diversion and change in place of use proposed in Transfer Application T-11669 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-11669 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-11669 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 7049 and any related decree.*
3. *The new proposed place of use under Certificate 7049 (1884 priority date) shall be subordinate to the priority dates for the district rights under Certificates 74080 (January 11, 1927) and 74081 (November 29, 1945). If the place of use changes in the future it will retain its original priority status and will be re-evaluated if necessary.*
4. *Water right Certificate 7049 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
5. *The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
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 diversion.*
 - b. *The water user shall maintain the meter or measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
7. *The Oregon Department of Fish and Wildlife (ODFW) may require the water user to install an approved fish screen at the new point of diversion within one year after receiving written notification that a fish screen is required. Once installed the water user shall maintain and operate the fish screen at the new point of diversion according to 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 day FEB 21 2018.


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

This Preliminary Determination was prepared by Marcy Osborn. If you have questions about the information in this document, you may reach me at 541-523-8224 ext.228 or marcy.j.osborn@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>