

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

In the Matter of Transfer Application ) PRELIMINARY DETERMINATION  
T-12743, Tillamook County ) PROPOSING APPROVAL OF A  
 ) CHANGE IN POINT OF DIVERSION

**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**

KARL AND REBECCA ZWEIFEL  
7550 HWY 101 SOUTH  
TILLAMOOK, OR 97141  
karl.zweifel@gmail.com

**Findings of Fact**

1. On September 13, 2017, KARL AND REBECCA ZWEIFEL filed an application to change the point of diversion under Certificate 24309. The Department assigned the application number T-12743.
2. Notice of the application for transfer was published on September 19, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 14, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12743 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of January 15, 2018, for the applicants to respond. The applicants requested the completion date be extended to October 1, 2020 and for the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

4. The right to be transferred is as follows:

**Certificate:** 24309 in the name of GOTTFRIED AND MARTHA FOSSBIND  
(perfected under Permit S-20018)  
**Use:** IRRIGATION OF 29.5 ACRES  
**Priority Date:** NOVEMBER 27, 1950

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.

**Rate:** 0.28 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, 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** TILLAMOOK RIVER, tributary to the TILLAMOOK BAY

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
2 S	9 W	WM	16	SW SW

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	9 W	WM	16	SW SW	20.3
2 S	9 W	WM	16	SE SW	9.2
Total					29.5

5. Transfer Application T-12743 proposes to move the authorized point of diversion approximately 560 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	9 W	WM	21	NW NW	50 FEET SOUTH AND 75 FEET EAST FROM THE SW CORNER OF SECTION 16

6. 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)]***

7. 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.
8. 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-12743.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.

### **Determination and Proposed Action**

The change in point of diversion proposed in Transfer Application T-12743 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-12743 is approved, the final order will include the following:*

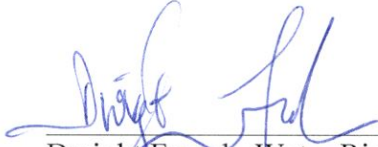
1. *The change in point of diversion proposed in Transfer Application T-12743 is approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 24309 and any related decree.*
3. *Water right Certificate 24309 is cancelled.*
4. *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.*
5. *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.*

6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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 change and full beneficial use of the water.*

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

Dated at Salem, Oregon this                     MAY 02 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](mailto: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>