

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12826, Klamath 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 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

DELYLE DIAZ  
DANIELLE DIAZ  
PO BOX 676  
MERRILL, OR

**Findings of Fact**

1. On January 18, 2018, DELYLE AND DANIELLE DIAZ filed an application to change the point of appropriation under Certificate 93008. The Department assigned the application number T-12826.
2. Notice of the application for transfer was published on January 30, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 25, 2018, the Department contacted the Applicant's agent in regards to the submission of an evidence of use affidavit and supporting documentation.
4. On January 26, 2018, the Department received an evidence of use affidavit and supporting documentation.
5. On April 5, 2018, the Department contacted the Applicant's agent regarding clarification of table 1 and 2 of the application, and the application map submitted.
6. On April 10, 2018, the Department received an amended table 1 and 2 of the application, and an amended application map.

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. On April 26, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-12826 because the proposal to allow 2.61 cfs for the transferred portion of the right would constitute enlargement of the right, which could result in injury to other rights. The draft Preliminary Determination cover letter set forth a deadline of May 28, 2018, for the applicants to respond.
8. On April 27, 2018, the applicants agreed to a limit of 1.36 cfs from the proposed well for use on the transferred lands, agreed to install a meter at the new well, and acknowledged their option of entering into a rotational use agreement with the holder of the remaining portion of the right, by notifying the Watermaster, which will establish a basis for the Watermaster to allow each of the water right holders to use the full 2.62 cfs on a rotational schedule. The applicants requested that the Department proceed with processing of the transfer and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
9. On May 14, 2018, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-12826 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of June 14, 2018, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination.

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

**Certificate:** 93008 in the name of LYNN R. POPE AND DELYLE AND DANIELLE DIAZ (perfected under Permit G-12431)  
**Use:** SUPPLEMENTAL IRRIGATION OF 125.8 ACRES  
**Priority Date:** MARCH 6, 1992  
**Rate:** 1.36 CUBIC FEET PER SECOND  
**Limit/Duty:** The amount of water used for irrigation under this right, together with the amount used under any other right existing for the same land, is limited to a diversion of ONE-EIGHTIETH 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.  
**Period of Use:** APRIL 15 THROUGH OCTOBER 15  
**Source:** A WELL, in the LOST RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	11 E	WM	33	NE NW	13.32 FEET SOUTH AND 3957.22 FEET WEST FROM THE NE CORNER OF SECTION 33

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	11 E	WM	28	SW NW	12.9
40 S	11 E	WM	28	NW SW	37.1
40 S	11 E	WM	28	SW SW	12.9
40 S	11 E	WM	29	SE NE	12.9
40 S	11 E	WM	29	NE SE	37.1
40 S	11 E	WM	29	SE SE	12.9
TOTAL					125.8

11. Transfer Application T-12826 proposes to move the authorized point of appropriation approximately 500 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	11 E	WM	28	SW SW	WELL 2 - 1111.4 FEET EAST AND 659.5 FEET NORTH FROM THE SW CORNER OF SECTION 28

***Transfer Review Criteria (OAR 690-380-4010)***

12. 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.
13. A 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-12826.
14. The proposed change, as conditioned, will not result in enlargement of the right.
15. The proposed change, as conditioned, will not result in injury to other rights.
16. All other application requirements are met.

**Determination and Proposed Action**

The change in point of appropriation proposed in Transfer Application T-12826, as conditioned, 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-12826 is approved, the final order will include the following:*

1. *The change in point of appropriation proposed in Transfer Application T-12826 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 93008 and any related decree.*

3. *Water right Certificate 93008 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 new, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
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 appropriation.*
  - 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 are located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
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 change 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,                     MAY 25 2018                    .

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

This Preliminary Determination was prepared by Jessica Joye. If you have questions about the information in this document, you may reach me at 503-986-0814 or [Jessica.L.Joye@oregon.gov](mailto:Jessica.L.Joye@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>