

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12815, Josephine County)	PROPOSING APPROVAL OF 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

MIKE AND GAIL MURPHY
6790 HOLLAND LOOP RD
CAVE JUNCTION, OR 97523

Findings of Fact

1. On January 2, 2018, MIKE AND GAIL MURPHY filed an application to change the place of use under Certificate 89393. The Department assigned the application number T-12815.
2. Notice of the application for transfer was published on January 16, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 29, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12815 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 30, 2018, for the applicant to respond. The Department only received information to demonstrate that the applicant is authorized to pursue the transfer.
4. On May 2, 2018, the Department contacted the applicant to determine if the applicant agreed to the findings and conditions outlined in the draft Preliminary Determination. The Department requested that the applicant respond by June 4, 2018.
5. On May 30, 2018, the applicant requested that the Department proceed with issuance of a 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.

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

Certificate: 89393 in the name of EVERETT G. CRUTCHFIELD (confirmed by SUCKER CREEK DECREE VOLUMES 1 AND 5, AT PAGES 252 AND 397)
Use: IRRIGATION OF 46.8 ACRES AND STOCK FOR TRACT #2 AND IRRIGATION OF 28.55 ACRES FOR TRACT #4
Priority Date: 1865 FOR TRACT #2 AND 1908 FOR TRACT #4
Rate: 0.94 CUBIC FEET PER SECOND (CFS) FOR TRACT #2, AND 0.36 CFS FOR TRACT #4, IF AVAILABLE AT THE ORIGINAL POINTS OF DIVERSION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	7 W	WM	29	NW SE	TRACT #4 - 1580 FEET NORTH AND 1000 FEET EAST FROM THE S1/4 CORNER OF SECTION 29
39 S	7 W	WM	32	NE NW	TRACT #2 - 250 FEET SOUTH AND 100 FEET WEST FROM THE N1/4 CORNER OF SECTION 32

Period of Use: APRIL 1 THROUGH OCTOBER 31 OF EACH YEAR

Source: SUCKER CREEK, tributary of the EAST FORK ILLINOIS RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	7 W	WM	31	NW SE	2257.9 FEET NORTH AND 134.7 FEET EAST FROM THE S1/4 CORNER OF SECTION 31

Authorized Place of Use:

IRRIGATION AND STOCK TRACT #2					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 W	WM	31	NE SE	1.00
39 S	7 W	WM	31	NW SE	31.60
39 S	7 W	WM	31	SW SE	14.20
Total					46.80

IRRIGATION TRACT #4					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 W	WM	31	NE SE	25.25
39 S	7 W	WM	31	SE SE	3.30
Total					28.55

7. Transfer Application T-12815 proposes to change the place of use of the right to:

IRRIGATION AND STOCK TRACT #2					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 W	WM	31	NE SE	25.25
39 S	7 W	WM	31	SE SE	14.20
39 S	7 W	WM	31	SE SE	6.35
39 S	7 W	WM	31	SE SE	1.00
Total					46.80

IRRIGATION TRACT #4					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 W	WM	31	NW SE	25.25
39 S	7 W	WM	31	SW SE	3.30
Total					28.55

8. The Department determined that a portion of the land to which Certificate 89393 is proposed to move is already covered by portions of a ground water registration for irrigation use.
9. Upon the issuance of a final order approving Transfer T-12815, the portions of Certificate 89393 and the certificate of registration that are appurtenant to the same place of use, as described in Finding #6, will become “layered” as defined by OAR 690-380-0100(4).
10. The Department is hereby notifying the applicant that, in accordance with OAR 690-380-2240, any future changes in place of use or character of use to the right evidence by Certificate 89393 may only be approved if concurrent changes to the “layered” portion of the ground water registrations (described in Finding #6) are also recognized or if affidavits of voluntary cancellation for the “layered” portion of the ground water registrations are submitted.

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

11. 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.
12. 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-12815.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.
15. All other application requirements are met.

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-12815 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-12815 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-12815 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 89393 and any related decree.*

3. *Water right Certificate 89393 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The former place of use of the transferred right shall no longer receive water under the right.*
5. *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.*
6. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

JUN 14 2018

Dated at Salem, Oregon this _____.



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

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or corey.a.courchane@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>