

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

In the Matter of Transfer Application)
T-9548, Douglas County)
)
) PRELIMINARY DETERMINATION
) PROPOSING APPROVAL OF A
) CHANGE IN POINT OF DIVERSION

Authority

ORS 540.505 to 540.580 establishes 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. OAR Chapter 690, Division 380 implements the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

Applicant

HAROLD AND PAULINE MESBERG
366 INDEPENDENCE LANE
ROSEBURG, OR 97470

Findings of Fact

1. On September 19, 2003, Harold and Pauline Mesberg, filed a transfer application to change the point of diversion under Certificate 76999. The Department assigned the application number T-9548.

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

Certificate: 76999 in the name of GEORGE C. BAILEY (perfected under Permit S-8700)
Use: IRRIGATION of 0.32 ACRE
Priority Date: SEPTEMBER 24, 1928
Rate: 0.004 CUBIC FOOT PER SECOND (CFS)
Limit/Duty: ONE-EIGHTIETH of one cfs per acre
Source: NORTH UMPQUA RIVER, tributary to UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
26 S	6 W	WM	32	NE NE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	6 W	WM	32	NE NE	0.26
26 S	6 W	WM	32	SE NE	0.06

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.
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- The Department received information that better describes the authorized point of diversion as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
26 S	6 W	WM	32	NE NE	1125 FEET SOUTH AND 10 FEET WEST FROM THE NE CORNER OF SECTION 32

- Transfer Application T-9548 proposes to move the authorized point of diversion approximately 350 feet downstream from the authorized point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
26 S	6 W	WM	32	SE NE	1490 FEET SOUTH AND 340 FEET WEST FROM THE NE CORNER OF SECTION 32

- Transfer applications T-9548, T-9561, T-9563, T-9569 and T-9580 all propose changes to the same water right, evidenced by Certificate 76999. T-9548, T-9561, T-9563 and T-9569 are being processed concurrently. T-9580 will be processed at a later time.
- Notice of the application for transfer was published on October 14, 2003, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
- Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens. Additionally, ODFW commented that there are five transfer applications all proposing to modify Certificate 76999 and documented concerns that the total combined system capacity for all five transfers totals more than the quantity of water allowed under the originating water right.
- Water Resources Department has concluded that while the capacity of the systems totals more than the quantity of water authorized under the originating water right (Certificate 76999), each final order issued for the transfer applications (T-9548, T-9561, T-9563, T-9569 and T-9580) will be limited to that percentage of the total rate that is proportionate to the place of use involved in each transfer, so as not to exceed the quantity authorized under the original water right.
- Water has been used within the last five years according to the terms and conditions of the right, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
- A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
- The proposed change would not result in enlargement of the right.
- The proposed change would not result in injury to other water rights.

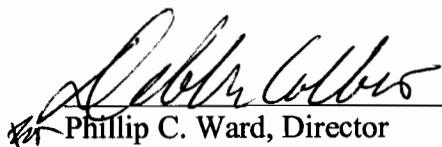
Determination and Proposed Action

The proposed change in point of diversion in Transfer Application T-9548 appears to be consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000, and will be approved provided that protests are not filed pursuant to OAR 690-380-4030.

If application T-9548 is approved, the final order will include the following:

1. *The change in point of diversion proposed in application T-9548 is approved.*
2. *Water right certificate 76999 is cancelled. A new certificate will be issued describing the portion of the right not involved in Transfer Applications T-9548, T-9561, T-9563 and T-9569.*
3. *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 76999 and any related decree.*
4. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. A Claim of Beneficial Use prepared by a Certified Water Rights 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.*
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. *When required by the Department, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.*
7. *The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the new point of diversion. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction, and shall be installed under the supervision of the Department of Fish and Wildlife.*
8. *When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 28 day of March 2007.


Phillip C. Ward, Director

This Preliminary Determination was prepared by Susan Douthit. If you have questions about the information in this document, you may reach me at 503-986-0858 or Susan.M.Douthit@wrд.state.or.us.

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