

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-7683, Douglas County) PROPOSING DENIAL 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

Dave Russel
1800 Del Rio Road
Roseburg, OR 97470

Findings of Fact

Background

1. On January 10, 1997, Dave Russel filed an application to change the point of diversion under Certificate 57553. The Department assigned the application number T-7683.
2. The portion of the right to be transferred is as follows:

Certificate: 57553 in the name of G. H. HARRELL (perfected under Permit S-28837)

Use: IRRIGATION of 1.70 ACRES

Priority Date: MAY 13, 1963

Rate: 0.021 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre during the irrigation season, provided further that right to the use of water is limited to the period when the flow of the North Umpqua River is more than 525 cfs at its mouth.

Source: NORTH UMPQUA RIVER, tributary to UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
26 S	6 W	WM	14	SW SE	MKINNEY DLC 45	2550 FEET SOUTH AND 2620 FEET WEST FROM THE E1/4 CORNER OF SECTION 14

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.

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
26 S	6 W	WM	14	SW SE		0.15
26 S	6 W	WM	23	NW NE	45	1.55

3. Application T-7683 proposes to move the authorized point of diversion approximately 360 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Lot	DLC	Survey Coordinates
26 S	6 W	WM	23	NW NE	14	45	600 FEET SOUTH AND 300 FEET EAST FROM THE N¼ CORNER OF SECTION 23

4. Notice of the application for transfer was published on January 21, 1997, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
5. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.
6. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
7. The proposed change would not result in enlargement of the right.
8. An instream water right, Certificate 59939, exists for the reach of the river in which the authorized point of diversion would be moved upstream, and streamflows within the reach are frequently below the levels allocated under the instream water right. Thus, the instream water right would be injured as a result of the proposed change in point of diversion.
9. On April 26, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-7683 to the applicant. The cover letter that accompanied the draft Preliminary Determination set forth a deadline of May 27, 2007, in which the applicant could respond.
10. On May 18, 2007, the applicant requested that the Department seek a recommendation from Oregon Department of Fish and Wildlife as to whether the Department should consent to injury of the instream water right pursuant to OAR 690-380-4030.

Determination and Proposed Action

The change in point of diversion proposed in application T-7683 does **not** appear 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 application will be denied.

Dated at Salem, Oregon this 20th day of June 2007.


Phillip C. Ward, Director

This Preliminary Determination was prepared by Vern Church. If you have questions about the information in this document, you may reach me at 541-883-4182 or Vernon.L.Church@ wrd.state.or.us.

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