

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

In the Matter of Transfer Application ) PRELIMINARY DETERMINATION  
T-10085, Douglas County ) PROPOSING APPROVAL OF A  
 ) CHANGE IN PLACE OF USE AND  
 ) CHARACTER OF USE

**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.

**Applicants**

DANA AND MARALEE WESTBROOK  
149 ROLLING RIDGE RD  
OAKLAND OR 97462-9746

**Findings of Fact**

**Background**

1. On February 9, 2006, Woran and Deborah Deckard, filed a transfer application to change the character of use and place of use under Certificate 40762. The Department assigned the application number T-10085.
2. On April 2, 2007, an assignment to Dana and MaraLee Westbrook was recorded in the records of the Water Resources Department.
3. The right to be transferred is as follows:

**Certificate:** 40762 in the name of ROBERT K. SPEEDY (perfected under Permit S-30304)

**Use:** STOCK

**Priority Date:** MARCH 18, 1965

**Rate:** 0.01 CUBIC FOOT PER SECOND (cfs)

**Source:** CALAPOOYA CREEK, tributary to NORTH UMPQUA RIVER

**Authorized Point of Diversion:**

| Twp  | Rng | Mer | Sec | Q-Q   | DLC             | Survey Coordinates  |
|------|-----|-----|-----|-------|-----------------|---|
| 25 S | 6 W | WM  | 12  | SW SW | CLYNE<br>DLC 49 | 2090 FEET SOUTH AND 860 FEET EAST<br>FROM THE W1/4 CORNER OF SECTION 12 |

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| 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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**Authorized Place of Use:**

| STOCK |     |     |     |       |              |
|-------|-----|-----|-----|-------|--------------|
| Twp   | Rng | Mer | Sec | Q-Q   | DLC          |
| 25 S  | 6 W | WM  | 12  | SW SW | CLYNE DLC 49 |

4. Transfer Application T-10085 proposes to change the place of use of the right to:

| Twp  | Rng | Mer | Sec | Q-Q   | Tax Lot | DLC |
|------|-----|-----|-----|-------|---------|-----|
| 25 S | 6 W | WM  | 12  | NW SW | 302     | 47  |

5. Transfer Application T-10085 also proposes to change the character of use to POND MAINTENANCE in a reservoir constructed under Permit R-5772.
6. Notice of the application for transfer was published on February 28, 2006, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
7. On May 31, 2007, the Department mailed a copy of the *draft* Preliminary Determination proposing to approve Transfer Application T-10085 to the applicants. The cover letter that accompanied the *draft* Preliminary Determination set forth a deadline of July 1, 2007, for the applicants to respond with comments. The applicants did not submit any comments, however they did provide the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
8. 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. Listed fish species are not present at the point of diversion, the originating water right diversion is not screened, cost-share funds are not currently available, and the proposed diversion may be eligible for ODFW's cost-share program. A grace period of two years is appropriate until such time as cost share funds become available to assist in the construction of a fish screening and/or by-pass device. If cost share funds do not become available, the water user must screen within the indicated time period regardless of the availability of cost share funding.
9. 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.
10. A pump and pipeline system sufficient to use the full amount of water allowed under the existing right were present within the five year period prior to the submittal of Transfer Application T-10085.
11. The Department has received information from the applicant that helps to establish the quantity of water used beneficially for stock under Certificate 40762. The applicant reported to the Department that water was beneficially used to fill a stock tank utilized by 80 head of

stock (cattle). The applicant also reported that the stock tank had a capacity of 150 gallons and is equipped with a float.

12. Using the information provided by the applicant and the widely accepted average of 12 gallons of water per day for each cow (as established by the U. S. Department of Health, Education and Welfare's Manual of Individual Water Supply Systems, Publication No. 24, Table 3 titled Non-Irrigation Water Requirements) the Department has determined that a maximum amount of water that could have been used beneficially for the authorized use was 0.01 cfs.
13. As defined by OAR 690-380-0100(2) the proposed change could result in enlargement if not conditioned so as to prevent use of more water than could have been beneficially used without waste for the existing authorized use, being stock use. Applicant agreement to the following conditions, however would be sufficient to ensure that the change would not result in enlargement to the water right:
  - A. Prior to diverting water for the changes proposed in Transfer Application T-10085 the water user shall install and maintain an in-line flow meter for measuring and recording the quantity of water diverted. The type and plans of the meter must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
  - B. The Director will require the water user to keep and maintain a monthly record of the quantity of water measured by the in-line flow meter diverted for the proposed use, being pond maintenance.
  - C. The water user shall report monthly the quantity of water used for pond maintenance. The Director may provide an opportunity for the water user to submit alternative reporting procedures for review and approval.
  - D. The water user shall allow the Watermaster access to the meter; provided however, where the meter is located within a private structure, the Watermaster shall request access upon reasonable notice.
  - E. Failure to comply with any of the provisions of these conditions may result in action including, but not limited to, restriction on the use, civil penalties or cancellation of the right.
  - F. At no time shall the water user divert water for POND MAINTENANCE from the authorized point of diversion in amounts greater than the 0.01 cfs, being the quantity of water authorized for the use of stock under Certificate 47062.
14. The proposed change would not result in injury to other water rights.

#### **Determination and Proposed Action**


The proposed changes of character of use and place of use, as conditioned, in Transfer Application T-10085 appear 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-10085 is approved, the final order will include the following:*

- 1. The changes in character of use and place of use proposed in application T-10085 are approved.*
- 2. Water right certificate 40762 is cancelled.*
- 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 40762 and any related decree.*
- 4. Prior to diverting water, the water user shall install and maintain an in-line flow meter for measuring and recording the quantity of water diverted. The type of in-line flow meter must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.*
- 5. The water user shall keep and maintain a record of the monthly quantity of water diverted from the authorized point of diversion.*
- 6. The water user shall report to the Watermaster monthly the information gathered under #5 above.*
- 7. At no time shall the water user divert more than 0.01 cfs (960 gallons per day).*
- 8. Within two years after the date of this order, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. The water user may withdraw water at the new point of diversion without screening or by-pass devices until two years after the date of this order. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*
- 9. 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.*
- 10. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 28<sup>th</sup> day of August 2007.

  
By 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@wrđ.state.or.us](mailto:Susan.M.Douthit@wrđ.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.