

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

In the Matter of Transfer Application)
T-10029, Marion County)
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)

PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A
REDESCRIPTION OF PLACE OF USE
AND CHANGES IN POINT OF
DIVERSION AND PLACE 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.

Applicant

FRED AND TERESA NETTER
15082 OTTAWAY ROAD
AURORA, OREGON 97002

Agent

PACIFIC HYDRO-GEOLOGY, INC.
GREG OR MALIA KUPILLAS
18477 SOUTH VALLEY VISTA ROAD
MULINO, OREGON 97042

Findings of Fact

Background

1. On December 1, 2005, Fred and Teresa Netter filed an application to change the place of use and point of diversion under Certificates 22661, 27877 and 27878. The Department assigned the application number T-10029.
2. On April 24, 2007, the applicant’s agent (Pacific Hydro-Geology, Inc.) submitted a revised application and map to resolve discrepancies involving the location of a portion of the irrigated land under Certificate 22661.
3. The original evidence of use affidavit submitted with the transfer application on December 1, 2005, contained a typographical error. Therefore, on May 15, 2007, the applicant submitted a revised evidence of use affidavit to correctly describe the location where water use occurred under the water rights involved in this transfer.

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.

4. On June 8, 2007, the Department mailed a copy of the draft Preliminary Determination to the applicants. The draft Preliminary Determination proposed to approve Transfer Application T-10029 with conditions and set forth a deadline of July 9, 2007, for the applicant(s) to respond.
5. The applicants met with Department staff on June 11, 2007, and raised concerns with proposed Condition #4 of the draft Preliminary Determination. The applicants requested additional time through August 31, 2007, to meet with their agent and respond to the draft Preliminary Determination. The request for additional time was granted by the Department.
6. The watermaster met with Fred Netter (applicant) and his agent during a site visit of the subject property in June 2007 to observe the authorized and proposed points of diversion under Transfer T-10029. The Pudding River Slough branches off of the Pudding River for approximately 1.0 mile and then re-enters and contributes to the Pudding River.
7. On July 27, 2007, the applicants' agent met again with the local watermaster to discuss the proposed transfer and whether the inclusion of Condition #4 in the draft Preliminary Determination for Transfer T-10029 was appropriate. Based upon the site visit described in Finding #6 and a better understanding of the flow of water in the Pudding River Slough, the watermaster reconsidered his earlier concerns about the availability of water at the original points of diversion as compared to the proposed point of diversion and determined that the transfer can be made without injury.
8. Based upon the determination made in Finding #7 above, the Department has concluded that proposed Condition #4 of the draft Preliminary Determination is no longer appropriate. The condition is modified to remove the restriction on the diversion of water at the proposed point of diversion during periods when the Pudding River Slough (Unnamed Stream) is not contributing surface water flows to the Pudding River.
9. On August 27, 2007, the applicants provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
10. Certificate 22661 describes the authorized place of use as 0.6 acre in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, 7.2 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, 17.8 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, and 4.4 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, Township 4 South, Range 1 West of W.M., Marion County, Oregon.
 - a) The revised transfer application and map for Transfer T-10029 depict the place of use under Certificate 22661 as being 1.1 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, 9.7 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, 16.1 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, and 3.1 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 13, Township 4 South, Range 1 West, W.M., Marion County, Oregon.
 - b) The slight differences between the acreage listed by $\frac{1}{4}$ $\frac{1}{4}$ on Certificate 22661 and the acreage figures for Certificate 22661 depicted on the revised transfer map for Transfer T-10029 are based upon an overlay of aerial photographs and digital tax lot maps for the area, as well as the Final Proof Survey map for Certificate 22661. By aligning landmarks, roads and other features on the sources of information, it is clear that the

Public Land Survey 1/16th lines shown on the Final Proof Map were shifted slightly north of where they should have been, leading the Department to conclude that the land to which the right has always been appurtenant should be redescribed as it is shown in the revised transfer application and map.

- c) The following table describes the place of use description in existing Certificate 22661, and a proposed redescription based on the findings above:

Original Description of Place of Use under Certificate 22661		Proposed Redescription of Place of Use		
Q-Q	Acres	Q-Q	Estimated Acres	Tax Lot
NE SE	0.6	NE SE	1.1	802
NW SE	7.2	NW SE	9.7	800
SW SE	17.8	SW SE	16.1	800
SE SE	4.4	SE SE	3.1	802
TOTAL:	30.0	TOTAL:	30.0	
Section 13, Township 4 South, Range 1 West, W.M.				

11. The first right to be transferred (as redescribed above) is as follows:

Certificate: 22661 in the name of BEN NETTER (perfected under Permit S-19189)

Use: IRRIGATION of 30.0 ACRES

Priority Date: AUGUST 4, 1949

Rate: 0.38 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre feet per acre per year

Source: UNNAMED STREAM, tributary to the PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
4 S	1 W	WM	13	SW SE

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change Proposed
4 S	1 W	WM	13	NE SE	0.6	POU & POD
4 S	1 W	WM	13	NE SE	0.5	POD only
4 S	1 W	WM	13	NW SE	3.6	POU & POD
4 S	1 W	WM	13	NW SE	6.1	POD only
4 S	1 W	WM	13	SW SE	16.1	POD only
4 S	1 W	WM	13	SE SE	3.1	POD only
TOTAL:					30.0	

12. A revised application map for Transfer T-10029, received by the Department on April 24, 2007, better describes the location of the authorized point of diversion for Certificate 22661 as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 S	1 W	WM	13	SW SE	700 FEET NORTH AND 1100 FEET EAST FROM THE S ¼ CORNER OF SECTION 13

13. Application T-10029 proposes to move the authorized point of diversion approximately 0.35 mile downstream to the following location:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 S	1 W	WM	13	SW SE	1030 FEET SOUTH AND 1470 FEET EAST FROM THE CENTER OF SECTION 13

14. Application T-10029 also proposes to change the place of use for 4.2 acres under the right (being 0.6 acre in NE ¼ SE ¼ and 3.6 acres in NW ¼ SE ¼ of Section 13, T. 4S, R. 1W, W.M.) referenced in Finding of Fact #11 to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 W	WM	13	NE SE	0.9
4 S	1 W	WM	13	NW SE	1.0
4 S	1 W	WM	13	SW SE	1.5
4 S	1 W	WM	13	SE SE	0.8
TOTAL:					4.2

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

Certificate: 27877 in the name of EARL H. DOHRMAN (perfected under Permit S-24051)

Use: IRRIGATION of 18.1 ACRES

Priority Date: FEBRUARY 14, 1956

Rate: 0.23 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre feet per acre per year

Source: PUDDING RIVER SLOUGH, tributary to the PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
4 S	1 W	WM	13	SE SW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 W	WM	13	NE SW	3.3
4 S	1 W	WM	13	SW SW	0.3
4 S	1 W	WM	13	SE SW	14.5
TOTAL:					18.1

16. A revised application map for Transfer T-10029, received by the Department on April 24, 2007, better describes the location of the authorized point of diversion for Certificate 27877 as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 S	1 W	WM	13	SE SW	150 FEET NORTH AND 75 FEET WEST FROM THE S ¼ CORNER OF SECTION 13

17. Application T-10029 proposes to move the authorized point of diversion approximately 0.6 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 S	1 W	WM	13	NE SE	1030 FEET SOUTH AND 1470 FEET EAST FROM THE CENTER OF SECTION 13

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

Certificate: 27878 in the name of BEN H. NETTER (perfected under Permit S-24444)
Use: IRRIGATION of 3.0 ACRES
Priority Date: JULY 19, 1956
Rate: 0.04 CUBIC FOOT PER SECOND (cfs)
Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre feet per acre per year
Source: PUDDING RIVER, tributary to the WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
4 S	1 W	WM	13	NE SE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 W	WM	13	NE SE	3.0
TOTAL:					3.0

19. A revised application map for Transfer T-10029, received by the Department on April 24, 2007, better describes the location of the authorized point of diversion for Certificate 27878 as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 S	1 W	WM	13	NE SE	1030 FEET SOUTH AND 1470 FEET EAST FROM THE CENTER OF SECTION 13

20. Application T-10029 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 W	WM	13	SW SE	3.0
TOTAL:					3.0

21. Notice of the application for transfer was published on December 6, 2005, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
22. 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.

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

23. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
24. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Application T-10029.
25. The proposed changes would not result in enlargement of the rights.
26. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action


The changes in point of diversion and place of use proposed in Transfer Application T-10029 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 approved.

If application T-10029 is approved, the final order will include the following:

1. *The changes in point of diversion and place of use proposed in Transfer Application T-10029 are approved.*
2. *Water right certificates 22661, 27877 and 27878 are cancelled. New certificates will be issued describing that portion of Certificates 27877 and 27878 not affected by this transfer.*
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 Certificates 22661, 27877 and 27878 and any related decree.*
4. *The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.*
5. *The former place of use of the transferred rights shall no longer receive water under the rights.*
6. *Prior to diverting water, 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. 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.*

7. *When required by the Department, the water user shall install, maintain and operate 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 measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.*
8. *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.*
9. *When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 31 day of August 2007.


Phillip C. Ward, Director

This Preliminary Determination was prepared by Lisa Jaramillo. If you have any questions about the information in this document, you may reach me at 503-986-0880 or Lisa.J.Jaramillo@wrdd.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.