

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

In the Matter of Transfer Application)
T-10571, Jackson County)
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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

MARY LOU KING
1700 BRANTA ROAD
JUNEAU, AK 99801

Findings of Fact

Background

1. On March 24, 2008, MARY LOU KING filed an application to change the place of use and to change the character of use under Certificate 30441. The Department assigned the application number T-10571.

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

- Certificate:** 30441 in the name of DAVID NEVILLE and F.W. SIMMONS (perfected under Permit 14200)
- Use:** IRRIGATION of 0.8 ACRE
- Priority Date:** MARCH 12, 1940
- Rate:** 0.01 CUBIC FOOT PER SECOND
- Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated, and shall be further limited to a

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.

diversion of not to exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season of April 2 to October 31 of each year.

Source: MILL CREEK, tributary to the ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
32 S	3 E	WM	28	NW SE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	2 E	WM	11	NW NE	0.8

- Certificate 30411 does not describe the location of the point of diversion. However, information from the Certified Water Right Examiner indicates that water is rediverted from the Nye Ditch as follows:

Rediversion					
Twp	Rng	Mer	Sec	Q-Q	Measured Distances
32 S	3 E	WM	28	SW SE	410 FEET NORTH AND 80 FEET EAST FROM THE S ¼ CORNER OF SECTION 2

- Transfer Application T-10571 proposes to change the character of use to domestic.
- Application T-10571 also proposes to change the place of use of the right to:

DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
33 S	2 E	WM	11	SW NE

- Because the change in character of use proposes a year-round use for domestic, the amount of water equivalent to irrigation of 0.8 acre (0.01 cfs) with a season of March 2 to October 31 of each year must be prorated and reduced to 0.006 cfs for year-round use (0.8 acre x 0.0125 (cfs) ÷ 365 days x 213 (irrigation season days)). The total maximum volume of 3.6 acre-feet (af) per year can be allowed for the domestic use (4.5 duty x 0.8 acre).
- Notice of the application for transfer was published on April 8, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On April 15, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10571 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 18, 2010, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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

- 9. Water has been used within the five-year period prior to submittal of the transfer application 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.
- 10. A diversion structure, ditch and pipeline 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-10571.
- 11. The proposed changes would not result in enlargement of the right.
- 12. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

- 13. ORS 540.510(1) and OAR 690-380-2250(5) provide that an order approving the transfer of a primary right shall cancel the portion of a supplemental water right appurtenant to the same lands if the supplemental water right is not included in the transfer. Certificate 29711 was not included in transfer application T-10571, and the appurtenant portion of the permit will be cancelled upon issuance of a final order approving T-10571.
- 14. Consistent with OAR 690-380-2250, with the issuance of the draft Preliminary Determination, the Department notified the applicant of the Department’s intent to cancel the portion of the supplemental water use permit described below in Finding of Fact No. 15. The applicant did not amend the transfer application to include the supplemental right.
- 15. The portion of the right to be cancelled is as follows:
 - Certificate:** 29711 in the name of F.W. SIMMONS and DAVID NEVILLE (perfected under Permit S-24259)
 - Use:** SUPPLEMENTAL IRRIGATION of 0.8 ACRE
 - Priority Date:** JUNE 4, 1956
 - Rate:** 0.01 CUBIC FOOT PER SECOND
 - Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
 - Source:** UNNAMED STREAM, tributary to ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
33 S	2 E	WM	11	NW NE

Authorized Place of Use to be Cancelled:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	2 E	WM	11	NW NE	0.8

Determination and Proposed Action

The change in place of use and change in character of use proposed in Transfer Application T-10571 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the portion of the supplemental water use described in Finding of Fact No. 15 should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the portion of the right under Certificate 29711 will be cancelled.

If application T-10571 is approved, the final order will include the following:

- 1. The change in place of use and change in character of use proposed in application T-10571 are approved. The portion of the right identified in Finding of Fact No. 14 is cancelled.*
- 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 30441 and any related decree.*
- 3. Water right certificate 30441 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.*
- 4. The use of water under this right is limited to 0.006 cfs and an annual volume limitation of 3.6 acre feet.*
- 5. The Director may require the water user to install a totalizing flow meter or other suitable measuring device at the point of diversion. If the Director notifies the water user to install a totalizing flow meter or other measuring device, the water user shall install such device specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meter or measuring device in good working order and shall allow the Watermaster access to the meter or measuring device.*
- 6. The former place of use of the transferred right shall no longer receive water under the right.*
- 7. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. 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.*

8. *When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 9 day of June 2010.


Phillip C. Ward, Director

This Preliminary Determination was prepared by Teri Hranac. If you have questions about the information in this document, you may reach me at 503-986-0881 or Teri.K.Hranac@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.