

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-10703, Deschutes County) PROPOSING DENIAL OF A CHANGE
) IN 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

DAVE AND SANDY MARLOW
70110 RUNNING HORSE COURT
SISTERS OR 97759

Findings of Fact

Background

1. On November 6, 2008, Dave and Sandy Marlow filed an application to change the place of use under Certificate 74135. The Department assigned the application number T-10703.
2. The portion of the first right to be transferred is as follows:

Certificate: 74135 in the name of Three Sisters Irrigation District (confirmed by the Squaw Creek* Decree. * Squaw Creek has been renamed Whychus Creek.)
Use: IRRIGATION of 2.0 ACRES
Priority Date: 1895
Rate: 0.04 CUBIC FOOT PER SECOND (cfs)
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-FIFTIETH of one cubic foot per second, or its equivalent for each acre irrigated during the irrigation season of each year.
Source: Whychus Creek (formerly known as SQUAW CREEK), tributary to the DESCHUTES RIVER.

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 Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	21	SW SW	998 FEET NORTH AND 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	11 E	WM	22	NW SE	2.00

3. Transfer Application T-10703 proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	11 E	WM	22	NW SE	2.00

4. The portion of the water use permit to be transferred is as follows:

Permit: G-11378 in the name of Squaw Creek Irrigation District.
Use: Supplemental Irrigation of 2.0 ACRES
Priority Date: October 8, 1984
Rate: 0.005 CUBIC FOOT PER SECOND (cfs)
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) and 3.0 acre-feet for each acre irrigation season of each year. This right is limited to any deficiency in the available supply of any prior right existing for the same land.
Source: two wells in the Squaw Creek Basin.

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	14	NE SE	Well 1 – 10 feet South and 620 feet West from the E¼ corner of Section 14
15 S	10 E	WM	14	NW SE	Well 2 – 40 feet South and 1400 feet West from the E¼ corner of Section 14

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	11 E	WM	22	NW SE	2.00

5. Transfer Application T-10703 proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	11 E	WM	22	NW SE	2.00

6. Notice of the application for transfer was published on November 11, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

7. On April 17, 2009, the Department received a letter from Marc Thalacker, Three Sisters Irrigation District (TSID) Manager, regarding this transfer application. A copy of a letter which was sent to the applicants from TSID was attached.

8. The District letter to the applicants stated that TSID would concur with the Departments' proposed approval of the application with the following inclusions:
 - a. A satisfactory petition be submitted to and approved by the TSID Board of Directors for inclusion of the proposed place of use lands within the District boundary
 - b. To assure the applicants are able to apply water to beneficial use, delivery of water under Certificate 74135 shall be made through one of the two following methods:
 - (1) Delivery of water via the McKenzie Canyon Group private pipeline, subject to receipt of written approval from the current owners of that system. Such change shall require a water delivery agreement between the applicants and the current owners of the system; or
 - (2) Install a turnout at the Black Butte Canal/pipeline in McKenzie Canyon. This option would require the applicants to secure easements and would require the applicants to install their own pumping station.
9. On several occasions (June 2, 2009, October 27, 2009, April 26, 2010 and July 12, 2010) the Department has inquired as to whether the applicants have addressed the requirements outlined in Finding of Fact #8 above. To date, the applicant has not submitted a satisfactory petition to the Board of Directors of Three Sisters Irrigation District nor have the applicants addressed which method of delivery (outlined above) they will use to deliver the water.

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

9. Water has been used within the last five years 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 pump, pipeline, and sprinkler system 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-10703.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-10703 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 transfer application will be denied.

Dated at Salem, Oregon this 13 day of July, 2010.


Phillip C. Ward, Director

This Preliminary Determination was prepared by Susan Douthit. If you have any 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.