

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

In the Matter of Transfer Application)
T-10870, Union County)
)
) PRELIMINARY DETERMINATION
) PROPOSING APPROVAL OF A
) CHANGE IN POINT OF DIVERSION
) AND 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

ANTHONY PAGLIARULO
PAUL PAGLIARULO
JOYCE PAGLIARULO
PO BOX 962
UNION OR 97883

Findings of Fact

Background

1. On May 6, 2009, Anthony Pagliarulo, Paul Pagliarulo, and Joyce Pagliarulo filed an application to change the point of diversion and change the place of use under Certificate 84366. The Department assigned the application number T-10870.
2. On October 1, 2009, the application was modified to include a change in point of diversion for an additional 2.25 acres under Certificate 84366.

3. The right to be transferred is as follows:

Certificate: 84366 in the name of ANTHONY P. PAGLIARULO (confirmed by Grande Ronde River Decree)
Use: IRRIGATION of 17.5 ACRES
Priority Date: 1866
Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 3.0 ACRE FEET PER ACRE in any irrigation season at a rate of not to exceed ONE-FORTIETH of one cubic foot per second per acre.

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.

Source: LITTLE CREEK, tributary to CATHERINE CREEK

Authorized Point of Diversion: STEWERT AND CAMERON DITCH

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|------|-----|-----|-------|-------|----------------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Type of change |
| 4 S | 40 E | WM | 20 | NE SE | 13.25 | POD/POU |
| 4 S | 40 E | WM | 21 | NW SW | 2.00 | POD/POU |
| 4 S | 40 E | WM | 21 | NW SW | 2.25 | POD ONLY |

4. Certificate 84366 does not describe the location of the point of diversion, however information is available from the application map indicating that the point of diversion is located as follows:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|-----|------|-----|-----|-------|---------------------------------------------------------------------------------------|
| 4 S | 40 E | WM | 21 | NE SW | CAMERON-STEWART - 1482 FEET NORTH AND 2332 FEET EAST FROM THE SW CORNER OF SECTION 21 |

5. Transfer Application T-10870 proposes to change the point of diversion location approximately 0.35 mile downstream to:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|-----|------|-----|-----|-------|--------------------------------------------------------------------|
| 4 S | 40 E | WM | 21 | NW NW | 1755 FEET NORTH AND 473 FEET EAST FROM THE SW CORNER OF SECTION 21 |

6. Application T-10870 also proposes to change the place of use of 15.25 acres listed in Finding of Fact #3 to:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 4 S | 40 E | WM | 20 | SE NE | 1.30 |
| 4 S | 40 E | WM | 20 | NE SE | 9.20 |
| 4 S | 40 E | WM | 21 | NW SW | 4.75 |

7. Notice of the application for transfer was published on May 26, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On March 15, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10870 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 20, 2010, for the applicants to respond. The applicants requested the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
9. On July 9, 2010, the applicants verified their intent to change the point of diversion for the entire right and acceptance of the Watermaster's and ODFW's conditions outlined in the draft Preliminary Determination.

10. 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)]

11. 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.
12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-10870.
13. The proposed changes would not result in enlargement of the right.
14. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The change in point of diversion and change in place of use proposed in Transfer Application T-10870 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 approved.

If Transfer Application T-10870 is approved, the final order will include the following:

1. *The change in point of diversion and change in place of use proposed in application T-10870 are approved.*
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 84366 and any related decree.*
3. *Water right certificate 84366 is cancelled.*
4. *The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at the point of diversion.*
 - b. *The water user shall maintain the measuring device in good working order.*

c. The water user shall allow the Watermaster access to the measuring device; provided however, where the measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.

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. The former place of use of the transferred right shall no longer receive water under the right.
8. The approved changes 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 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, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon, this 14 day of July 2010.


Phillip C. Ward, Director

This Preliminary Determination was prepared by Teri Hranac. If you have any 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.