

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

In the Matter of Transfer Application)
T-11061, Marion County)
)
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)
)

PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF
CHANGES IN POINTS OF DIVERSION,
PLACES 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.

Applicant

COMMONWEALTH GROUP, LLC
PO BOX 1185
SILVERTON, OR 97381

Receiving Landowner

EDER BROS., INC.
11690 HOOK RD. NE
MT. ANGEL, OR 97362

Findings of Fact

Background

1. On April 12, 2010, COMMONWEALTH GROUP, LLC, (CHUCK STADELI, OWNER), filed an application to change the point of diversion and the place of use under Certificate 6088 and to change the point of diversion, place of use, and the character of use under Certificate 35993. The Department assigned the application number T-11061.

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

Certificate: 6088 in the name of D. MCCLEARY (perfected under Permit S-6384)
Use: IRRIGATION of 22.0 ACRES
Priority Date: JULY 1, 1924
Rate: 0.28 CUBIC FOOT PER SECOND
Limit: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to a diversion of ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated.
Source: ABIQUA CREEK, tributary to the PUDDING 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.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	22	NE SE	13.0
6 S	1 W	WM	22	NW SE	9.0

3. Certificate 6088 does not describe the location of the point of diversion, however information is available from the transfer application indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6S	1W	WM	22	NE SE	1440 FEET NORTH AND 880 FEET WEST FROM THE SE CORNER OF SECTION 22

4. Transfer Application T-11061 proposes to move the authorized point of diversion approximately 4 miles downstream (on the Pudding River) to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6S	1W	WM	16	NW SW	3500 FEET SOUTH AND 2560 FEET WEST FROM THE N¼ CORNER OF SECTION 16

5. Application T-11061 also proposes to change the place of use of the right to:

IRRIGATION'					
Twp	Rng	Mer	Sec	Q-Q	Acres
6S	1W	WM	16	NE SW	20.9
6S	1W	WM	16	NW SW	1.1

6. The second right to be transferred is as follows:

Certificate: 35993 in the name of A. J. HUMPERT (perfected under Permit S-32842)

Use: SAND AND GRAVEL WASHING

Priority Date: AUGUST 16, 1967

Rate: 0.61 CUBIC FOOT PER SECOND

Limit: The amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.61 cubic foot per second.

Source: ABIQUA CREEK, tributary to the PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	22	NE SE	1750 FEET NORTH AND 780 FEET WEST FROM THE SE CORNER OF SECTION 22

Authorized Place of Use:

SAND AND GRAVEL WASHING					
Twp	Rng	Mer	Sec	Q-Q	
6 S	1 W	WM	22	NE SE	

7. Transfer Application T-11061 proposes to move the authorized point of diversion approximately 4 miles downstream (on the Pudding River) to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	16	NW SW	3500 FEET SOUTH AND 2560 FEET WEST FROM THE N¼ CORNER OF SECTION 16

8. Transfer Application T-11061 proposes to change the character of use to Irrigation.
9. Application T-11061 also proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
6 S	1 W	WM	16	NE SW			3.4
6 S	1 W	WM	16	SE SW		59	18.5
6 S	1 W	WM	16	NW SE		52	5.9
6 S	1 W	WM	16	NW SE	3		14.1
6 S	1 W	WM	16	SW SE		59	6.5
6 S	1 W	WM	16	SW SE	4		0.4

10. The receiving landowner will be responsible for completing the changes and submitting a Claim of Beneficial Use after a Final Order is issued approving the transfer.
11. Notice of the application for transfer was published on April 20, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
12. A letter requesting additional information was issued on June 25, 2010. In response to the letter, a meeting was held July 23, 2010 at the Department with Steve Applegate (the agent for T-11061), and on July 26, 2010, the applicant submitted additional property information.
13. On August 25, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11061 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 27, 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.
14. 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)]

15. Evidence was submitted with the application indicating that water has been used within the last five years according to the terms and conditions of the rights. There is also information suggesting that there may have been an extended period of time during which the right was

not exercised. However, the information in the record is not sufficient to initiate cancellation proceedings under ORS 540.631.

16. 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 Transfer Application T-11061.
17. The proposed changes would not result in enlargement of the rights, provided irrigation use is subject to the standard rate and duty and irrigation season conditions for this basin, being 1/80 cfs per acre, limited to 2.5 acre-feet per acre per year during the irrigation season.
18. The proposed changes would not result in injury to other water rights.

Diminution of a Water Right

19. The proposed place of use has an existing primary irrigation right evidenced by Certificate 40304 on 18.8 acres of the proposed place of use for the transferred rights. Pursuant to OAR 690-380-5120, when multiple primary irrigation rights exist on the same lands, the water right with the oldest priority date shall be considered the primary water right (unless the water user designates otherwise) and all other rights shall be diminished to supplemental.
20. On April 12, 2010, Eder Brothers, Inc., by Duane Eder, Partner (the landowner) submitted an affidavit for the partial diminution of water right Certificate 40304 from primary to supplemental irrigation, to become effective upon issuance of a Final Order approving Transfer Application T-11061. The portion of the right to be diminished is as follows:

Certificate: 40304 in the name of Robert W. Johnson (perfected under Permit S-33026)
Use: IRRIGATION of 18.8 ACRES
Priority Date: OCTOBER 27, 1967
Rate: 0.24 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: UNNAMED STREAM AND RESERVOIR, tributary to the WILLAMETTE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
6 S	1 W	WM	16	NW SE	3	STREAM: 2840 FEET SOUTH AND 250 FEET EAST FROM THE N¼ CORNER OF SECTION 16
6 S	1 W	WM	16	NW SE	3	RESERVOIR: 2970 FEET SOUTH AND 300 FEET EAST FROM THE N¼ CORNER OF SECTION 16

Authorized Place of Use to be diminished to Supplemental:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
6 S	1 W	WM	16	NE SW		5.9
6 S	1 W	WM	16	NW SE	3	12.7
6 S	1 W	WM	16	SW SE		0.2

Determination and Proposed Action

The change in point of diversion, change in place of use, and change in character of use proposed in Transfer Application T-11061 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.

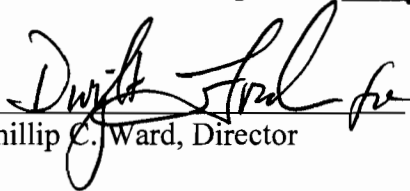
If Transfer Application T-11061 is approved, the final order will include the following:

1. *The change in points of diversion, change in places of use, and change in character of use proposed in Transfer Application T-11061 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 Certificates 6088 and 35993 and any related decree, with the exception that sediment treatment will no longer be required under the Certificate 35993 right for the new irrigation use.*
3. *Water right certificates 6088 and 35993 are cancelled. A new certificate will be issued describing that portion of the Certificate 6088 right not affected by this transfer.*
4. *Certificate 40304 is cancelled and a new certificate will be issued to reflect the diminution of 18.8 acres to supplemental irrigation.*
5. *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.*
6. *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 each point of diversion.*
 - b. *The water user shall maintain the meters or measuring devices in good working order.*

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

7. Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.
8. 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.
9. The former place of use of the transferred rights shall no longer receive water under the rights.
10. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. 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 changes and full beneficial use of the water.
11. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 16 day of Sept. 2010.


Phillip C. Ward, Director

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Dorothy Pedersen at 503-986-0890 or Dorothy.I.Pedersen@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.