

Authorized Place of Use:

QUASI-MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
39 S	12 W	WM	17	SE NW
39 S	12 W	WM	17	NE SW
39 S	12 W	WM	17	NW SE
39 S	12 W	WM	17	SW SE

- Transfer Application T-11175 proposes to move the authorized point of diversion approximately 1800 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	12 W	WM	16	SW SW	1005 FEET NORTH AND 2879 FEET EAST FROM THE S¼ CORNER OF SECTION 17

- Notice of the application for transfer was published on January 4, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On February 7, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11175 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 7, 2011, 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.
- On February 10, 2011, the applicants requested the department correct a scrivener's error in the draft Preliminary Determination regarding the location of the proposed point of diversion.
- 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. Listed fish species are not present at the point of diversion, the originating water right diversion is not screened, cost-share funds are not currently available, and the proposed diversion may be eligible for ODFW's cost-share program. A grace period of two years is appropriate until such time as cost share funds become available to assist in the construction of a fish screening and/or by-pass device. If cost share funds do not become available, the water user must screen within the indicated time period regardless of the availability of cost share funding.

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

- 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. Water Right Certificate 86738 was issued on December 7, 2010.

9. A diversion structure 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-11175.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in point of diversion proposed in Transfer Application T-11175 appears 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-11175 is approved, the final order will include the following:

1. *The change in point of diversion proposed in Transfer Application T-11175 is 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 86738 and any related decree.*
3. *Water right certificate 86738 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 each point of diversion.*
 - b. *The water user shall maintain the meter or measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device are located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Within two years after the date of this order, 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. The water user may withdraw water at the new point of diversion without screening or by-pass devices until two years after the date of this order. 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 approved change 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 change and full beneficial use of the water.*
8. *When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 14 day of February 2011.


Dwight French for
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.