

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11233, Jackson County	)	PROPOSING APPROVAL OF
	)	CHANGES IN PLACE 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

WITT AND WILLOW, LLC
658 SHALE CITY RD
ASHLAND, OR 97520

Findings of Fact

Background

1. On April 18, 2011, WITT AND WILLOW, LLC filed an application to change the place of use and to change the character of use under Certificate 76626. The Department assigned the application number T-11233.
2. On June 24, 2011, the applicants requested the application be amended to transfer the fish pond use while continuing to utilize the livestock portion of the right.
3. On August 1, 2011, the applicants submitted additional information supporting the evidence of use affidavit.
4. On August 11, 2011, the applicants submitted an amended application and map requesting to transfer the fish pond use along with one-half of the livestock use.
5. The portion of the right to be transferred is as follows:

Certificate: 76626 in the name of HENRY LANINI (perfected under Permit S-18263)

Use: STOCK AND FISH POND

Priority Date: JUNE 4, 1948

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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Rate: 0.025 CUBIC FOOT PER SECOND (being 0.02 cfs for fish pond and 0.005 for livestock use)

Source: A SPRING, tributary to EMIGRANT CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
38 S	2 E	WM	10	NE NW

Authorized Place of Use:

STOCK AND FISH POND				
Twp	Rng	Mer	Sec	Q-Q
38 S	2 E	WM	10	NE NW

6. The applicant submitted information that further describes the authorized point of diversion as being:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	2 E	WM	10	NE NW	447 FEET SOUTH AND 1330 FEET EAST FROM THE NW CORNER OF SECTION 10

7. Transfer Application T-11233 proposes to change the character of use to commercial use for a campground with a maximum occupancy of 60 persons for the tent campsites.

8. Transfer Application T-11233 proposes to change the place of use of the right to:

COMMERCIAL				
Twp	Rng	Mer	Sec	Q-Q
38 S	2 E	WM	10	SW NW

9. The proposed change in use to commercial use in Transfer application T-11223 requests that a portion of the diversion rate allowed under Certificate 76626 for stock use be converted to commercial use. Certificate 76626 does not have a limitation on the duty (or volume) of water for stock use. The calculated annual volume of water under this right, based on the authorized rate of diversion for stock use of 0.005 cubic foot per second (cfs), will be 3.61 acre feet per year (calculated by: $0.005 \text{ cfs} \times 1.98 \text{ acre feet per day (af/day)} \times 365 \text{ days}$).
10. Transfer application T-11233 requests that the 0.02 cfs rate for the fish pond be converted to commercial use. However, because the water flows in and out at the same rate, the quantity of water to be transferred would be limited to the amount of evaporation loss from the fish pond. The fish pond has an area of 0.18 acre or 7692 square feet. Based on the best available information, the annual evaporation rate for this location is 32 inches per year. Therefore, the amount of water available to be transferred is 0.47 acre feet (calculated by: $32 \text{ inches per year} \div 12 \text{ inches/foot} \times 7692 \text{ square feet} \div 43,560 \text{ square feet per acre}$).
11. The total volume of water diverted for commercial use is limited to 4.08 acre feet per year (afy) (calculated: 3.61 afy from stock + 0.47 afy from fish pond). The total number of gallons that may be diverted annually for commercial use is limited to 1,329,469 gallons per year (calculated: $4.08 \text{ afy} \times 325,850 \text{ gallons/acre}$).

12. Notice of the application for transfer was published on April 26, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
13. On August 17, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11233 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 17, 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.

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

14. 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.
15. A diversion structure and ditch 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-11233.
16. The proposed changes would not result in enlargement of the right as conditioned in Findings of Fact No. 10 through 12.
17. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

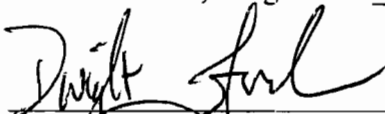
The change in place of use and change in character of use proposed in Transfer Application T-11233 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-11233 is approved, the final order will include the following:

1. *The change in place of use and change in character of use proposed in Transfer Application T-11233 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 76626 and any related decree.*
3. *Water right certificate 76626 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The use of water for the proposed commercial use is limited to 1,329,469 gallons per year, the equivalent of 4.08 acre feet per year.*

5. *When required by the Department, the water user shall install, maintain and operate 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.*
6. *The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.*
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, 2013**. 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.*
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 September 2011.


Dwight French, Water Right Services Administrator, 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@wrdd.state.or.us.

Protests should be addressed to the attention of Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

STATE OF OREGON
COUNTY OF JACKSON
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

HENRY LANINI
DEAD INDIAN RD
ASHLAND, OR 97520

confirms the right to use the waters of A SPRING, a tributary to of FROG CREEK WATERSHED, TRIBUTARY OF EMIGRANT CREEK, for LIVESTOCK.

This right was perfected under Permit S-18263. The date of priority is JUNE 4, 1948. The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 0.005 CUBIC FOOT PER SECOND, or its equivalent in case of rotation, measured at the point of diversion.

The point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	2 E	WM	10	NE NW	447 FEET SOUTH AND 1330 FEET EAST FROM THE NW CORNER OF SECTION 10

A description of the place of use to which this right is appurtenant is as follows:

LIVESTOCK				
Twp	Rng	Mer	Sec	Q-Q
38 S	2 E	WM	10	NE NW

This certificate describes that portion of the water right confirmed by Certificate 76626, State Record of Water Right Certificates, NOT modified by the provisions of an order of the Water Resources Director entered _____, approving Transfer Application T-11233.

The issuance of this superseding certificate does not confirm the status of the water right in regard to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.

The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described.

WITNESS the signature of the Water Resources Director, affixed _____.

Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR