



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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February 15, 2014

VIA E-MAIL

WESLEY & DONNA BOYER
32127 MYRTLWOOD LN
HERMISTON, OR 97838

SUBJECT: Water Right Transfer Application T-11276

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11276. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the Department's notice.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0881 or Teri.K.Hranac@wrdd.state.or.us if I may be of assistance.

Sincerely,

Teri Hranac
Transfer and Conservation Section

Enclosures

cc: T-11276
Tony G. Justus, District 5 Watermaster *(via e-mail)*
Dale VanSchoiack, CWRE #333, 2141 S. Lyle Street, Kennewick, WA 99337-4277
Hermiston Irrigation District, 366 E. Hulburt Ave., Hermiston, OR 97838

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-11276, Umatilla County) PROPOSING APPROVAL OF A
) CHANGE IN POINT OF
) APPROPRIATION

Authority

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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

WESLEY AND DONNA BOYER
32127 MYRTLWOOD LANE
HERMISTON, OR 97838

Findings of Fact

Background

1. On August 4, 2011, WESLEY AND DONNA BOYER filed an application to change the point of appropriation under Certificate 83197. The Department assigned the application number T-11276.
2. On February 8, 2012, the applicant amended the application clarifying the place of use.
3. The portion of the right to be transferred is as follows:

Certificate: 83197 in the name of DENNIS AND JUDITH CULP (perfected under Permit G-12416)

Use: IRRIGATION OF 1.5 ACRES

Priority Date: JUNE 7, 1994

Rate: 0.02 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 ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: WELL 1 within the UMATILLA RIVER BASIN

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 Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	28 E	WM	36	NW SE	520 FEET SOUTH AND 810 FEET EAST FROM THE C¼ CORNER OF SECTION 36

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
5 N	28 E	WM	36	NW SE	1.5	1105

- Transfer Application T-11276 proposes to move the authorized point of appropriation approximately 400 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	28 E	WM	36	NW SE	660 FEET SOUTH AND 1170 FEET EAST FROM THE C¼ CORNER OF SECTION 36

- Notice of the application for transfer was published on August 9, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On February 10, 2012, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11276 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 14, 2012, for the applicants to respond. The applicants 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)

- 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. Certificate 83197 was issued on February 23, 2007.
- 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-11276.
- The proposed change would not result in enlargement of the right.
- The proposed change would not result in injury to other water rights.

Determination and Proposed Action

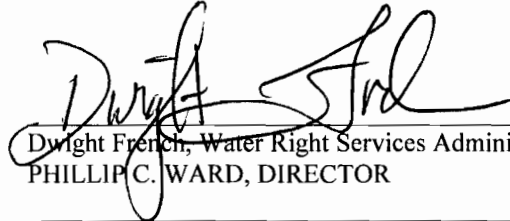
The change in point of appropriation proposed in Transfer Application T-11276 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-11276 is approved, the final order will include the following:

- 1. The change in point of appropriation proposed in Transfer Application T-11276 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 83197 and any related decree.*
- 3. Water right certificate 83197 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
- 4. The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original points of appropriation.*
- 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 new point of appropriation.*
 - 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. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
- 7. The former place of use of the transferred right shall no longer receive water under the right.*
- 8. The approved change 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 change and full beneficial use of the water.*

9. *When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 16 day of February 2012.



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@ wrd.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.