



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

North Mall Office Building  
725 Summer St. NE, Suite A  
Salem, OR 97301  
Phone 503-986-0900  
FAX 503-986-0904  
www.wrd.state.or.us

May 21, 2012

### Applicant

JULIE DEAN  
32020 WEST VALLEY HWY  
SHERIDAN, OR 97378

SUBJECT: Water Right Transfer Application T-10643

Please find enclosed the 2<sup>nd</sup> Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-10643. 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 and in The Sun newspaper, 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 last date of newspaper publication.

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) 986-0890 or [Dorothy.I.Pedersen@ wrd.state.or.us](mailto:Dorothy.I.Pedersen@ wrd.state.or.us) if I may be of assistance.

Sincerely,

Dorothy Pedersen  
Transfer Program Advisor

cc: T-10643  
Mike L. McCord, District 16 Watermaster (*via e-mail*)

encs



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

In the Matter of Transfer Application            ) 2<sup>ND</sup> PRELIMINARY DETERMINATION  
T-10643, Yamhill County                        ) PROPOSING APPROVAL OF A  
  ) CHANGE IN PLACE OF USE, AND A  
  ) CHANGE IN 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**

JULIE DEAN  
32020 WEST VALLEY HWY  
SHERIDAN OR 97378

**Findings of Fact**

**Background**

1. On June 9, 2008, Julie Dean filed an application to change the point of diversion, add points of diversion, change the place of use and change the character of use under Certificates 23254, 49958 and 43096. The Department assigned the application number T-10643.
2. On May 3, 2012, the applicant requested modifications to the transfer application, to omit the changes to Certificates 23254 and 49958, and to omit the change in point of diversion and additional points of diversion.
3. The right to be transferred is as follows:
  - Certificate:** 43096 in the name of TAYLOR LUMBER COMPANY (perfected under Permit S-37083)
  - Use:** INDUSTRIAL (SAWMILL AND WOOD TREATING PLANT)
  - Priority Date:** AUGUST 4, 1972
  - Rate:** 0.22 CUBIC FOOT PER SECOND
  - Source:** SOUTH YAMHILL RIVER, tributary to the YAMHILL 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 Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	6 W	WM	33	SE NE	42	10 FEET NORTH AND 23 FEET WEST FROM THE SE CORNER OF WOOD DLC 44

**Authorized Place of Use:**

INDUSTRIAL						
Twp	Rng	Mer	Sec	Q-Q	DLC	
5 S	6 W	WM	27	SW SW	42	
5 S	6 W	WM	28	SE SE	42	
5 S	6 W	WM	33	NE NE	42	
5 S	6 W	WM	33	NE NE	44	
5 S	6 W	WM	33	NW NE	44	
5 S	6 W	WM	33	SW NE	44	
5 S	6 W	WM	33	SE NE	44	

4. Based on the survey by Certified Water Right Examiner Matt Dunckel and the transfer map, the Public Land Survey quarter-quarter line does not exactly align with the J Wood DLC 44 line. Therefore, the diversion point appears to actually be in the SW NE of Section 33, rather than in the SE NE as stated on the certificate. The diversion point is better described as:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	6 W	WM	33	SW NE	42	10 FEET NORTH AND 23 FEET WEST FROM THE SE CORNER OF WOOD DLC 44

5. Transfer Application T-10643 proposes to change the character of use to IRRIGATION.
6. The rate per acre for irrigation in the vicinity of the proposed place of use is 1/80 cfs per acre. At this ratio, 0.22 cfs could be applied to 17.6 acres for irrigation.
7. Application T-10643 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	6 W	WM	28	SE SW	44	8.9
5 S	6 W	WM	33	NE NW	44	8.7
TOTAL						17.6

8. Certificate 43096 does not set an annual duty for industrial uses; however, ORS 540.610 states “beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state.” Use of more water per year than could maximally have been beneficially used for the original industrial use would constitute enlargement of the right, which is not allowable. Therefore, to avoid enlarging the right in the conversion to irrigation, an annual limit should be added to the right.
9. The best currently available information indicates that beneficial use of water for irrigation of crops in the area would not likely exceed 2.5 acre-feet per acre, for a total of 44.0 acre-feet per year (17.6 x 2.5 = 44.0 acre-feet). This volume does not exceed the annual amount of water that could have been used by the sawmill and wood treating plant.

10. Notice of the application for transfer was published on June 24, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
11. On June 29, 2009, the Department sent the applicant an e-mail, recapping changes to the application that were agreed to at a meeting with the applicant on June 26, 2009, and requesting confirmation of those changes. No record of the applicant's response is in the file.
12. On December 30, 2009, the Department sent a letter to the applicant, requesting more information about the pumping and delivery system and acknowledgement of the requirement to submit landownership information prior to approval of the transfer. The letter requested the information to be submitted by January 29, 2010. On January 29, 2010, Julie Dean requested 90 more days to submit the information. A verbal acknowledgement of the requirement for ownership information was received June 21, 2010.
13. On May 12, 2010, the Department sent an e-mail reminder to Julie Dean and received an e-mail in response, stating that she had been in the hospital. The Department sent a reminding e-mail on May 19, 2010.
14. On June 21, 2010, the applicant was reached by phone. She indicated that she was trying to set up a meeting with the railroad, and would e-mail pumping and delivery information. It is unclear when the information about the pumping and delivery system was received.
15. On July 16, 2010, Julie Dean indicated by e-mail that she was still waiting to receive a letter of approval from the railroad. Further e-mail exchanges on August 27 and September 3, 2010 did not result in any additional information.
16. On October 29, 2010, Julie Dean e-mailed, indicating the location for the proposed point of diversion and stating that she still planned to pursue consent for routing the delivery system in relation to the highway and the railroad.
17. On May 10, 2011, the Department contacted the applicant by e-mail, indicating that portions of the rights identified for transfer appear to have had buildings on them prior to 2003, which would make those portions of Certificates 49958 and 23254 not transferable. The applicant was requested to respond by May 20<sup>th</sup>, to plan a strategy and time schedule for modifying the application as needed to be able to continue processing. No response was received.
18. On June 28, 2011, the Department attempted to contact Julie Dean by phone and discovered the phone number was out of service. The May 10<sup>th</sup> e-mail was again sent, with a statement that if no response was received by June 30, 2011, a Preliminary Determination to deny T-10643 would be issued. On June 29, 2011, Julie Dean responded by e-mail indicating that she was out of town and would get back to us when she had returned, but no response was received.
19. On July 8, 2011, the Department again e-mailed Julie Dean, offering to meet with her by phone or in person to work out a plan to resolve the deficiencies. A response was requested by July 20, 2011. No response was received.

20. On August 5, 2011, the Department e-mailed the applicant, indicating that a Preliminary Determination would be issued within a few days, and explaining the steps in processing the transfer. Julie Dean responded by e-mail, asking what would be needed to make it easy. The Department asked her to call and indicated the Preliminary Determination would be sent after Wednesday, August 10, 2011, with information in the cover letter, if no phone conversation had occurred. No response was received from Julie Dean.
21. On August 12, 2011, the Department mailed a copy of a draft Preliminary Determination proposing to deny Transfer Application T-10643 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 12, 2011, for the applicant to respond.
22. On August 12, 2011, the applicant responded by e-mail, indicating that she could come to the Water Resources Department office on August 22, 2011, to discuss options. However, Julie Dean did not come to the appointment.
23. On August 23, 2011, the applicant indicated that she would not be able to meet until sometime in September after the start of school. The Department responded that a Preliminary Determination to deny would be issued unless modifications to the transfer or plans to have changes made by a CWRE were received before September 12<sup>th</sup>. The Department invited Julie Dean to communicate her questions by e-mail or phone, or to make another appointment to come into the office to meet with a staff person. No response was received.
24. On September 27, 2011, the Department sent Julie Dean another e-mail, stating that unless she submitted changes or came in for a conference by September 30, 2011, a Preliminary Determination to deny the T-10643 transfer application would be issued and put on public notice October 4, 2011. Again no response was received from the applicant.
25. On October 7, 2011, the Department issued a Preliminary Determination proposing to deny Transfer Application T-10643 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on October 11, 2011, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
26. Over the next several months, communications between the Department and Julie Dean via telephone, and an in-person meeting in the Department office took place on February 22, 2012.
27. On May 3, 2012, the applicant agreed, via e-mail, to a proposal (detailed in an e-mail dated April 13, 2012), to modify the transfer application to remove Certificates 49958 and 23254 and the changes in points of diversion, withdraw the October 7, 2011 Preliminary Determination, and continue processing based on the revised application.
28. On May 7, 2012, the Department withdrew the October 7, 2011, Preliminary Determination, so the transfer could be modified and a new Preliminary Determination issued based on the

modified application. On May 17, 2012, the applicant requested that two years be allowed for completion of the changes.

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

29. 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 right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
30. Pumps, pipelines, and a delivery 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-10643.
31. The proposed changes would not result in enlargement of the right.
32. The proposed changes would not result in injury to other water rights.

**Determination and Proposed Action**

The changes in character of use and place of use proposed in Transfer Application T-10643 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If application T-10643 is approved, the final order will include the following:*

1. *The changes in character of use and place of use proposed in application T-10643 are approved.*
2. *Water right certificate 43096 is cancelled.*
3. *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 43906, and any related decree, as modified by this order.*
4. *The annual volume for irrigation transferred under Certificate 43096 shall not exceed 46 acre-feet per year.*
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 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 is located within a private structure, the Watermaster shall request access upon reasonable notice.*

6. *The former place of use of the transferred right shall no longer receive water under the right.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2014**. 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.*
8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 18 day of May, 2012.

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

This second Preliminary Determination was prepared by Dorothy Pedersen. If you have questions about the information in this document, you may reach me at 503-986-0890 or [Dorothy.I.Pedersen@wr.d.state.or.us](mailto:Dorothy.I.Pedersen@wr.d.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.