



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department
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July 23, 2012

SCABBY HOLLOW RANCH LLC
PO BOX 845
MADRAS, OR 97741

SUBJECT: Water Right Transfer Application T-11428

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11428. 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@wrd.state.or.us, if I may be of assistance.

Sincerely,

Teri Hanac
Transfer Specialist
Transfer and Conservation Section

Enclosure

cc: T-11428
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)
Michele W. Sims, Agent for the applicant (*via e-mail at sims.mw@gmail.com*)



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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11428, Jefferson County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE 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

SCABBY HOLLOW RANCH, LLC
PO BOX 845
MADRAS, OR 97741

Findings of Fact

Background

1. On May 31, 2012, SCABBY HOLLOW RANCH, LLC filed an application to change the place of use under Certificate 13645. The Department assigned the application number T-11428.

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

Certificate: 13645 in the name of CHARLES W. PALMEHN (confirmed by Deschutes River Decree)
Use: IRRIGATION of 43.7 ACRES
Priority Date: 1892
Rate: 1/60 OF ONE CUBIC FOOT PER SECOND (CFS) PER ACRE (0.725 CFS)
Limit/Duty: 2.0 ACRE-FEET PER ACRE, MEASURED AT THE POINT OF DIVERSION FROM THE STREAM
Period of Use: APRIL 1 TO NOVEMBER 1
Source: WILLOW CREEK, tributary to the DESCHUTES 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.
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Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	15 E	WM	21	SW SE	19.2
12 S	15 E	WM	21	SE SE	5.9
12 S	15 E	WM	28	NE NE	11.9
12 S	15 E	WM	28	NW NE	6.7
TOTAL					43.7

3. Certificate 13645 does not describe the location of the point of diversion. However, information is available from the Certified Water Right Examiner that indicates the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	15 E	WM	28	NE NE	552 FEET SOUTH AND 23 FEET WEST FROM THE NE CORNER OF SECTION 28

4. Transfer Application T-11428 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	15 E	WM	21	SW SE	0.9
12 S	15 E	WM	28	NE NE	10.1
12 S	15 E	WM	28	NW NE	4.9
12 S	15 E	WM	28	SW NE	9.2
12 S	15 E	WM	28	SE NE	18.6
TOTAL					43.7

5. Notice of the application for transfer was published on June 5, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On July 5, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11428 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 6, 2012, 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)]

7. 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.
8. 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-11428.

9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-11428 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-11428 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-11428 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 13645 and any related decree.*
3. *Water right certificate 13645 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *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.*
5. *The former place of use of the transferred right shall no longer receive water under the right.*
6. *Full beneficial use of the water shall be made, consistent with the terms of this order, 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.*

7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 20th day of July, 2012.

E. Timothy Wall *for*

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@wrд.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.