



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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September 24, 2012

VIA E-MAIL: carl@jshfarms.com

Applicant

Carl St. Hilaire
St. Hilaire Bros. Hermiston Farm, LLC
84186 Hwy 37
Hermiston, OR 97844

SUBJECT: Water Right Transfer Application T-11404

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11404. 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 Hermiston Herald 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 Department's notice *or* 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@wrp.state.or.us if I may be of assistance.

Sincerely,

Dorothy I. Pedersen
Transfer Program Advisor

cc: File T-11404
Tony G. Justus, District 5 Watermaster (*via e-mail*)
Molly A. Reid, Agent for the applicant (*via e-mail: mreid@gsiws.com*)
Shonee D. Langford, attorney for the applicant (*via e-mail: slangford@schwabe.com*)
West Extension Irrigation District

encs



exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: COLUMBIA RIVER, tributary to the PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	25 E	WM	18	NE NE	1190 FEET NORTH AND 10 FEET WEST FROM THE SE CORNER OF THE NE¼ NE¼ OF SECTION 18

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 N	25 E	WM	20	NW SE	31.45
4 N	25 E	WM	20	SW SE	1.00

4. Transfer Application T-11404 proposes to change the place of use to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
5 N	30 E	WM	27	NE NE	4.40
5 N	30 E	WM	27	NW NE	24.34
5 N	30 E	WM	27	SW NE	3.60
5 N	30 E	WM	27	SE NE	0.11

5. Transfer Application T-11404 also proposes to change the point of diversion for the above described right upstream approximately 33 miles to a new pumping station located:

Proposed Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
5 N	30 E	WM	8	SW NW	2920 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 8

6. Notice of the application for transfer was published on April 24, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. The Oregon Department of Fish and Wildlife has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is currently equipped with an appropriate fish screen.
8. On August 23, 2012, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11357 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 24, 2012, for the applicant to respond. On September 10, 2012, the applicant provided written correspondence via e-mail requesting the Department to proceed with issuance of a Preliminary Determination and on September 11, 2012, provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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

9. Water has been used within the five-year period prior to submittal of the transfer application 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.
10. A diversion structure, 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-11404.
11. The proposed changes would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The changes in place of use and point of diversion proposed in Transfer Application T-11404 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.

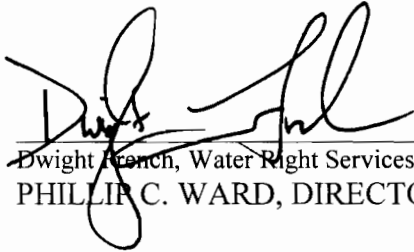
If Transfer Application T-11404 is approved, the final order will include the following:

1. *The changes in place of use and point of diversion proposed in application T-11404 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 44107 and any related decree.*
3. *Water right certificate 44107 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 diversion shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *The Director may require the water user to install a totalizing flow meter or suitable measuring device at the new point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall 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.*
6. *The water user shall operate and maintain an approved fish screen at the new point of diversion. If Oregon Department of Fish and Wildlife (ODFW) determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW*

standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

7. *The former place of use of the transferred right shall no longer receive water under the right.*
8. *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.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 24 day of September, 2012.



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

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@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.