



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.oregon.gov/owrd

October 2, 2012

Applicant

EASTERN OREGON AGRICULTURAL RESEARCH CENTER
OREGON STATE UNIVERSITY
P.O. BOX E (372 S. TENTH STREET)
UNION, OR 97883

SUBJECT: Water Right Transfer Application T-11420

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11420. 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) 986-0890 or Dorothy.I.Pedersen@wrp.state.or.us if I may be of assistance.

Sincerely,

Dorothy I. Pedersen
Transfer Program Advisor

cc: T-11420
Shad L. Hattan, District 6 Watermaster (*via e-mail*)
Tim DelCurto, Agent for the applicant (*via e-mail: tim.delcurto@oregonstate.edu*)
Gregory T. Blackman, CWRE #021, address: 126 Ridge Drive, La Grande, OR 97850

encs



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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-11420, Union County) PROPOSING APPROVAL OF
) CHANGES 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

EASTERN OREGON AGRICULTURAL RESEARCH CENTER
OREGON STATE UNIVERSITY
P.O. BOX E (372 S. TENTH STREET)
UNION, OR 97883

Findings of Fact

Background

1. On May 10, 2012, Tim DelCurto, Director of the Eastern Oregon Research Center filed an application to change the place of use under Certificates 6251 and 41056. The Department assigned the application number T-11420.

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

Certificate: 6251 in the name of EASTERN OREGON EXPERIMENT STATION
(confirmed by Grande Ronde River for Union County)

Use: IRRIGATION of 135.8 ACRES

Priority Date: 1867

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 a diversion of ONE-FORTIETH of one cubic foot per second (cfs), 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.

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.

Source: CATHERINE CREEK, tributary to the GRANDE RONDE RIVER

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	39 E	WM	23	NE NE	24.0
4 S	39 E	WM	23	SE NE	40.0
4 S	39 E	WM	24	NW NW	31.8
4 S	39 E	WM	24	SW NW	40.0
TOTAL:					135.8

3. Certificate 6251 does not describe the location of the point of diversion for this water use. However information is available from the Grande Ronde River adjudication map and from the current map prepared by the applicant's Certified Water Rights Examiner based on a recent field visit and subsequent survey indicating that the current point of diversion on Catherine Creek is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 S	40 E	WM	18	SW SW	GODLEY DITCH #1

4. Transfer Application T-11420 proposes to change the place of use for the above described right to:

Proposed Place of Use:

Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	39 E	WM	24	NW NE	17.0
4 S	39 E	WM	24	SW NE	40.0
4 S	39 E	WM	24	NE NW	38.3
4 S	39 E	WM	24	SE NW	40.5
TOTAL:					135.8

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

Certificate: 41056 in the name of EASTERN OREGON EXPERIMENT STATION (perfected under Permit S-30419)

Use: IRRIGATION of 135.8 ACRES

Priority Date: MAY 3, 1965

Rate: 2.41 CUBIC FEET PER SECOND

Limit/Duty: limited to an amount actually beneficially used and shall not exceed a diversion of ONE-FORTIETH of one cfs, 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: CATHERINE CREEK, tributary to the GRANDE RONDE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 S	40 E	WM	18	SW SW	40 FEET NORTH AND 1120 FEET EAST FROM THE SW CORNER OF SECTION 18

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	39 E	WM	24	NW NE	17.0
4 S	39 E	WM	24	SW NE	40.0
4 S	39 E	WM	24	NE NW	38.3
4 S	39 E	WM	24	SE NW	40.5
TOTAL:					135.8

6. Transfer Application T-11420 proposes to change the place of use for the above described right to:

Proposed Place of Use:

Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	39 E	WM	23	NE NE	24.0
4 S	39 E	WM	23	SE NE	40.0
4 S	39 E	WM	24	NW NW	31.8
4 S	39 E	WM	24	SW NW	40.0
TOTAL:					135.8

7. Transfer Application T-11420 proposes to change the place of use of two water rights by essentially swapping or “flip-flopping” the two water rights. A portion of the place of use (“FROM” lands) for Certificate 41056 also has a layered supplemental irrigation right under Certificate 64476. The 28.4 acres of supplemental irrigation is located:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	39 E	WM	24	NW NE	12.3
4 S	39 E	WM	24	NE NW	16.1

The transfer proposes to allow the supplemental water right to remain in place and become layered with a portion of the incoming, more senior water right Certificate 6251.

8. Notice of the application for transfer was published on May 15, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. On August 10, 2012, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11420 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 9, 2012, for the applicant to respond. On September 6, 2012, the applicant submitted correspondence by mail requesting the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that they are authorized to pursue the transfer.

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

10. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

11. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11420.
12. Since the supplemental right described in Finding of Fact #7 will become layered with a primary right that is senior to its original primary right, the supplemental water right will not be enlarged by the change, and will be in compliance with the “similar reliability” process established and authorized under OAR 690-382-0200 (5).
13. The proposed change would not result in enlargement of the rights.
14. 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-11420 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-11420 is approved, the final order will include the following:

1. *The change in place of use proposed in application T-11420 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 Certificates 6215 and 41056 and any related decree.*
3. *Water right certificates 6251 and 41056 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
4. *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 each point of diversion (new and existing). The water user shall maintain the meters or measuring devices in good working order. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
5. *The former places of use of the transferred rights shall no longer receive water under the rights.*
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.*

Dated at Salem, Oregon this 28 day of September, 2012.


Dwight Beach, Water Right Services Administrator, for
PHILIP 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@ wrd.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.