



Oregon

John A. Kitzhaber, MD, Governor

December 12, 2012

VIA E-MAIL: galpinsunday@gmail.com

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

Applicant

C. A. GALPIN
744 CARDLEY AVE SUITE 100
MEDFORD, OR 97504

SUBJECT: Water Right Transfer Application T-8840

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-8840. 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 Medford Mail Tribune 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@wrdd.state.or.us if I may be of assistance.

Sincerely,

Dorothy Pedersen
Transfer Program Advisor

cc: T-8840
Larry P. Menteer, District 13 Watermaster (*via e-mail*)
Delia Kau, Agent for the applicant (*via e-mail: delia@galpinllc.com*)
Herbert Farber, CWRE #45 (*via e-mail: herb@farbersurveying.com*)

encs



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

In the Matter of Transfer Application)
T-8840, Jackson County)
)
) PRELIMINARY DETERMINATION
) PROPOSING APPROVAL OF A
) CHANGE IN PLACE OF USE AND
) 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

C. A. GALPIN
744 CARDLEY AVE SUITE 100
MEDFORD, OR 97504

Findings of Fact

Background

1. On June 14, 2001, Don Lambert filed an application to change the place of use under Certificate 81335. The Department assigned the application number T-8840.
2. On June 17, 2005, the transfer application was assigned to C. A. Galpin.
3. On September 12, 2012 the department received a revised application and map reflecting modifications to T-8840 including a change in character of use.
4. The portion of the right proposed to be transferred is as follows:

Certificate: 81135 in the name of LITTLE BUTTE IRRIGATION CO. (confirmed by Little Butte Creek, 1949)

Use: IRRIGATION of 5.0 ACRES, DOMESTIC and LIVESTOCK

Priority Date: 1883

Rate: 0.09 CUBIC FOOT PER SECOND, measured at the head of the ditch or the point where the same leaves the natural stream, from April 1st to October 1st of each year. The right to use any of said waters for domestic and stock purposes shall be limited to those rights specifically authorized for such use and shall continue throughout the year, in an amount as is reasonably necessary for such purposes, not exceeding the quantity herein limited.

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.

Limit/Duty: The quantity of water diverted for domestic and stock purposes shall not exceed ONE-FORTIETH of a second foot for each authorized water right holder having one hundred head of stock or less; and in excess of one hundred head of stock, each authorized water right holder having a right therefore shall be entitled to divert ONE-FORTIETH of one second foot for each additional hundred head of stock; but during the irrigation season as herein limited, the quantity diverted by each water right holder for irrigation purposes in the amount to which he is entitled to divert the same, shall include the water to which he is entitled for stock and domestic purposes.

Source: LITTLE BUTTE CREEK, tributary to the ROGUE RIVER

Authorized Points of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|-----|-----|-----|-------|--|
| 35 S | 1 E | WM | 31 | SW SE | 560 FEET NORTH AND 2990 FEET EAST FROM THE SW CORNER OF SECTION 31 |

Authorized Place of Use:

| IRRIGATION | | | | | | | |
|------------|-----|-----|-----|-------|------|---------|-------|
| Twp | Rng | Mer | Sec | Q-Q | GLot | Tax Lot | Acres |
| 36 S | 1 W | WM | 3 | SW NW | 5 | 706 | 5.0 |

- The applicant proposes to change the character of use proposed in Finding of Fact #4 to Mining Water Use.
- Application T-8840 also proposes to change the place of use of the right to:

| MINING | | | | | | | |
|--------|-----|-----|-----|-------|------|---------|-------|
| Twp | Rng | Mer | Sec | Q-Q | GLot | Tax Lot | Acres |
| 36 S | 1 W | WM | 3 | NW NW | 5 | 601 | 0.7 |
| 36 S | 1 W | WM | 3 | SW NW | | 601 | 4.3 |

- Notice of the application for transfer was published on June 26, 2001, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On October 28, 2002 the Department sent a deficiency letter to the applicant, requesting additional information.
- On June 17, 2005, C.A. Galpin, the applicant, submitted items that were addressed in the October 28, 2002, deficiency letter.
- On February 7, 2012, the agent for Wal-Mart, owner of the "from lands" consented to the changes proposed in T-8840.
- On March 7, 2012, March 12, 2012, May 10, 2012 and July 10, 2012, the Department contacted the applicant by e-mail correspondence and numerous phone calls were made to notify the applicant of remaining deficiencies in the application. One response was provided on May 14, 2012, that the applicant would follow up on the list of deficiencies that were addressed. No further responses to the e-mails or phone calls were received.

12. On August 20, 2012, the Department sent to the applicant a copy of the Preliminary Determination proposing to deny Transfer Application T-8840, accompanied by a letter describing the deficiencies that needed to be resolved before the transfer could be approved. The draft Preliminary Determination cover letter set forth a deadline of September 20, 2012, for the applicant to respond. On August 29, 2012, the applicant provided the necessary information that was requested to approve the transfer as well demonstrate that the applicant is authorized to pursue the transfer, and on September 11, requested to change the completion date to October 1, 2018.
13. On September 12, 2012, the applicant revised the application to include a change in character of use, and submitted a revised map.
14. On October 12, 2012, the Department sent a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-8840 to the applicant. The applicant requested that the Department proceed with issuance of a Preliminary Determination.

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

15. 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.
16. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-8840.
17. The proposed change would not result in enlargement of the right.
18. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

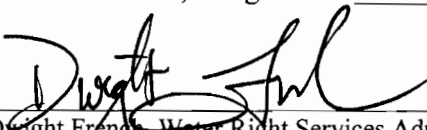
The change in place of use proposed in Transfer Application T-8840 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be denied

If Transfer Application T-8840 is approved, the final order will include the following:

1. *The change in place of use and change in character of use proposed in application T-8840 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 81135 and any related decree.*

3. *Water right certificate 81135 is modified. The Department will issue a superseding certificate describing the right when it determines that is necessary for record keeping.*
4. *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 existing 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.*
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, 2018**. 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.*
7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 12th day of December, 2012.


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

This Preliminary Determination was prepared by Carrie Matthews. If you have questions about the information in this document, you may reach me at 541-523-8224 x 36 or Carrie.R.Matthews@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.