



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

January 10, 2013

Applicant

THREE SISTERS IRRIGATION DISTRICT
Attn: MARC THALACKER, MANAGER
PO BOX 2230
SISTERS, OR 97759

Co-Applicants

CITY OF SISTERS
Attn: EILEEN STEIN, CITY MANAGER
PO BOX 39
SISTERS, OR 97759

RICHARD MORROW
PO BOX 1671
SISTERS, OR 97759

SHARON AMESTOY
7209 SE MADISON
PORTLAND, OR 97215

DAVID HERMAN
57735 WHITEHORSE RANCH LANE
FIELDS, OR 97710

Agent

DESCHUTES RIVER CONSERVANCY
ATTN: GEN HUBERT *(via e-mail)*
700 NW HILL STREET
BEND, OR 97701

Co-Applicants

WILLIAM WILLITTS
800 BUCKAROO TRAIL
SISTERS, OR 97759

JAY R. POULOS
4389 CROISAN RIDGE WAY S.
SALEM, OR 97302

BRUCE ROGNLIEN
1679 ALTA MURA RD.
PACIFIC PALISADES, CA 90272

SUBJECT: Water Right Transfer Application T-11318

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11318. 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 Bend Bulletin 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, whichever is later.

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@wrд.state.or.us if I may be of assistance.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy I. Pedersen".

Dorothy Pedersen
Transfer Program Advisor

cc: T-11318
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)

encs

Findings of Fact

Background

1. On November 17, 2011, Three Sisters Irrigation District, and co-applicants listed above, filed an application to change the points of diversion under Certificates 86824, 83355, 85389, 85391, 86828, 86826, 85392, 85386, 85393, 85387 and 85388. The application also contained a request for a fee waiver under OAR 690-380-3400 (3) and supplied the appropriate documentation from the Oregon Department of Fish & Wildlife. The application also contained a request for a map waiver under OAR 690-380-3410 (1)(c) and supplied the appropriate documentation from the Oregon Department of Fish & Wildlife. The Department approved the requests. The Department assigned the transfer application number T-11318.

2. Transfer application was filed in conjunction with Conserved Water Application CW-71 and will be processed simultaneously.

3. The first right to be transferred is as follows:

Certificate: 86824 in the name of CITY OF SISTERS and LAZY Z MEADOWS, LLC (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 59.5 ACRES

Priority Date: 1880

Rate: 1.23 CUBIC FEET PER SECOND

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	600 FEET NORTH AND 1100 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	NE SW	704	18.0
15 S	10 E	WM	10	NW SW	704	0.3
15 S	10 E	WM	10	SW SW	704	1.2
15 S	10 E	WM	10	SE SW	704	37.0
15 S	10 E	WM	10	SW SE	704	3.0

4. The second right to be transferred is as follows:

Certificate: 83355 in the name of G.W. McFARLANE (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 30.0 ACRES

Priority Date: 1880

Rate: 0.62 CUBIC FOOT PER SECOND

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-FIFTIETH of one cubic foot per second, or its equivalent for each acre irrigated during the irrigation season of each year.

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW SE	704	30.0

5. Certificate 83355 does not describe the location of the point of diversion, however information is available from the transfer application, indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

6. The third right to be transferred is as follows:

Certificate: 85389 in the name of CITY OF SISTERS (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 2.5 ACRES

Priority Date: 1880

Rate: 0.08 CUBIC FOOT PER SECOND

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	NW SE	704	2.4
15 S	10 E	WM	10	SW SE	704	0.1

7. The fourth right to be transferred is as follows:

Certificate: 85391 in the name of CITY OF SISTERS (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 3.0 ACRES

Priority Date: 1880

Rate: 0.10 CUBIC FOOT PER SECOND

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW SW	704	3.0

8. The fifth right to be transferred is as follows:

Certificate: 86828 in the name of CITY OF SISTERS and LAZY Z MEADOWS, LLC (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 18.0 ACRES

Priority Date: 1880

Rate: 0.57 CUBIC FOOT PER SECOND

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW SE	704	3.0
15 S	10 E	WM	10	SE SE	704	4.2
15 S	10 E	WM	15	NE NE	200	10.8

9. The sixth right to be transferred is as follows:

Certificate: 86826 in the name of CITY OF SISTERS and LAZY Z MEADOWS, LLC (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 35.5 ACRES

Priority Date: 1881

Rate: 0.71 CUBIC FOOT PER SECOND

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	15	NE NE	200	6.6
15 S	10 E	WM	15	NW NE	200	28.9

10. The seventh right to be transferred is as follows:

Certificate: 85392 in the name of CITY OF SISTERS and HAWK'S HAVEN RESERVE, LLC, BRUCE & MARLEEN ROGNLIEN (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 30.0 ACRES

Priority Date: 1886

Rate: 0.60 CUBIC FOOT PER SECOND

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION - HAWK'S HAVEN RESERVE, LLC						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW NW	706	9.9
15 S	10 E	WM	10	SE NW	706	12.6
15 S	10 E	WM	10	NE SW	706	0.3
15 S	10 E	WM	10	NW SW	706	0.2

IRRIGATION - CITY OF SISTERS						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	15	NW NE	200	7.0

11. The eighth right to be transferred is as follows:

Certificate: 85386 in the name of HAWK'S HAVEN RESERVE, LLC, BRUCE and MARLEEN ROGNLIEN (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 40.0 ACRES

Priority Date: 1895

Rate: 0.80 CUBIC FOOT PER SECOND

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION - HAWK'S HAVEN RESERVE						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW NE	706	3.6
15 S	10 E	WM	10	SW NW	706	18.8
15 S	10 E	WM	10	SE NW	706	16.1
15 S	10 E	WM	10	NE SW	706	1.5

12. The ninth right to be transferred is as follows:

Certificate: 85393 in the name of SHARON AMESTOY, AMESTOY RANCH, LLC; LAZY Z RANCH c/o JAY POULOS; and SKI POND RANCH, LLC, c/o DAVID HERMAN, (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 58.7 ACRES

Priority Date: 1900

Rate: 1.174 CUBIC FEET PER SECOND (if available at the original point of diversion being within the NW¹/₄ SW¹/₄, Section 9, Township 15 South, Range 10 East, W.M.; 910 Feet South and 160 Feet East from the W¹/₄ Corner of Section 9) or its equivalent in case of rotation, measured at the point of diversion

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION - AMESTOY RANCH						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW NE	702	0.9
15 S	10 E	WM	10	SE NE	702	6.8
15 S	10 E	WM	10	NE SE	702	6.8
15 S	10 E	WM	10	NW SE	702	2.0

IRRIGATION - LAZY Z RANCH						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	NE SW	700	8.1

IRRIGATION - SKI POND RANCH, LLC						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	14	NE NE	1700	1.1
15 S	10 E	WM	14	NW NE	1700	6.3
15 S	10 E	WM	14	SW NE	1700	24.7
15 S	10 E	WM	14	SE NE	1700	2.0

13. The tenth right to be transferred is as follows:

Certificate: 85387 in the name of SHARON AMESTOY, AMESTOY RANCH, WILLITTS, LLC, R & B RANCH, LLC, c/o RICK MORROW (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)
Use: IRRIGATION of 72.0 ACRES
Priority Date: 1908
Rate: 1.44 CUBIC FEET PER SECOND
Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION – WILLITTS, LLC						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW NW	800	1.3
15 S	10 E	WM	10	NW SW	800	3.7

IRRIGATION – AMESTOY RANCH						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	NE SE	702	17.8
15 S	10 E	WM	10	SW SE	702	0.3
15 S	10 E	WM	10	SE SE	702	8.9

IRRIGATION – R & B RANCH, LLC						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	11	NW SW	1300	10.0
15 S	10 E	WM	11	SW SW	1300	24.0
15 S	10 E	WM	11	SE SW	1300	6.0

14. The eleventh right to be transferred is as follows:

Certificate: 85388 in the name of SHARON AMESTOY, AMESTOY RANCH, LLC, and R & B RANCH, LLC, c/o RICK MORROW (perfected under Permit E-176)
Use: IRRIGATION of 29.4 ACRES
Priority Date: October 7, 1912
Rate: 0.37 CUBIC FOOT PER SECOND
Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION – AMESTOY RANCH						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SE NE	702	11.9
15 S	10 E	WM	10	NE SE	702	2.6

IRRIGATION – R & B RANCH, LLC						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	NE SE	1300	2.1
15 S	10 E	WM	10	SE SE	1300	9.0
15 S	10 E	WM	11	SW SW	1300	3.8

15. Transfer Application T-11318 proposes to change the point of diversion for the above described eleven rights downstream approximately 1400 feet to the Three Sisters Irrigation District main diversion:

Proposed Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	998 FEET NORTH AND 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

16. Notice of the application for transfer was published on November 22, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
17. The Oregon Department of Fish and Wildlife has determined that a fish screen is necessary at the new point of diversion and that the diversion is currently equipped with an appropriate fish screen.
18. On November 27, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11318 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of December 28, 2012, for the applicants to respond. The applicants requested clarification on Condition #7 of the final page of the draft Preliminary Determination. OWRD confirmed that the CWRE will review the new POD for capacity and the District may request a waiver to provide self-certification maps from the District for the places of use. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

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

19. 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 records that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
20. 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-11318.
21. The proposed changes would not result in enlargement of the rights.

22. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The changes in points of diversion proposed in Transfer Application T-11318 appear 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-11318 is approved, the final order will include the following:

1. *The changes in points of diversion proposed in application T-11318 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 Certificates 86824, 83355, 85389, 85391, 86828, 86826, 85392, 85386, 85393, 85387, 85388 and any related decree.*
3. *Water right Certificates 86824, 83355, 85389, 85391, 86828, 86826, 85392, 85386, 85393, 85387 and 85388 are cancelled.*
4. *The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.*
5. *The water user shall maintain and operate the existing measuring device and shall make such improvements as may be required by the Department.*
6. *The water user shall maintain and operate a fish screen at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.*
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. (See clarification in Finding of Fact #17 above.)*
8. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 11 day of January, 2013.


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

This of the 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@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.

**Notice of Preliminary Determination for
Water Right Transfer T-11318**

T-11318 filed by Three Sisters Irrigation District, PO Box 2230, Sisters, OR 97759 and co-applicants: City Of Sisters, PO Box 39; Richard Morrow, PO Box 1671; William Willitts, 800 Buckaroo Trail, ALL of Sisters, OR 97759; Sharon Amestoy, 7209 SE Madison, Portland, Or 97215; David Herman, 57735 Whitehorse Ranch Ln, Fields, Or 97710; Jay R. Poulos, 4389 Croisan Ridge Way S, Salem, Or 97302; Bruce Rognlien, 1679 Alta Mura Rd, Pacific Palisades, Ca 90272; proposes to change the points of diversion for 7.694 cubic feet per second of water rights under Certificates 86824, 83355, 85389, 85391, 86828, 86826, 85392, 85386, 85393, 85387 and 85388, from diversions on Wychus Creek, located within Sec. 21, T15S, R10E, W.M. The applicant proposes to change the points of diversion for all the rights downstream within Sec. 21. The Water Resources Department has concluded that the proposed transfer appears to be consistent with the requirements of ORS Chapter 540 and OAR 690-380-5000.

Any person may file, jointly or severally, with the Department a protest or standing statement within 30 days after the date of final publication of notice in the Department's weekly notice or of this newspaper notice, whichever is later. A protest form and additional information on filing protests may be obtained by calling (503) 986-0883. The last date of newspaper publication is ***[DATE OF LAST PUBLICATION]***. If no protests are filed, the Department will issue a final order consistent with the preliminary determination.

