



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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February 14, 2013

Applicant

SCOTT LIVESTOCK CO.
4876 NORTH ROAD H
VALE, OR 97918

SUBJECT: Water Right Transfer Application T-11148

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11148. 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@ wrd.state.or.us if I may be of assistance.

Sincerely,

Dorothy I. Pedersen
Transfer Program Advisor

cc: T-11148
Ronald K. Jacobs, District 9 Watermaster (*via e-mail*)
Pat Woodcock, Agent for the applicant (*via e-mail: pat@ck3llc.net*)

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11148, Malheur 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.

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Agent

CK3, LLC
ATTN: PAT WOODCOCK
368 SW 5TH AVE
ONTARIO, OR 97914

Findings of Fact

Background

1. On October 25, 2010, SCOTT LIVESTOCK CO., filed an application to change the place of use and points of diversion under Certificates 1120 and 1620. The Department assigned the application number T-11148.
2. On March 16, 2012, the applicant submitted a revised application and map clarifying that the transfer was for a change in place of use only and identified the lands associated with the rights to be modified.
3. On December 12, 2012, a new revised map was submitted.
4. The first right to be transferred is as follows:
Certificate: 1120 in the name of JOHN O. THOMSON (perfected under Permit S-1594)
Use: IRRIGATION of 13.0 ACRES AND DOMESTIC USE
Priority Date: JUNE 6, 1913
Rate: 0.27 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-EIGHTIETH of one cubic foot per second, or its equivalent for each

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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acre irrigated or its equivalent in case of rotation; balance for domestic use.
The use for irrigation purposes shall conform to any reasonable rotation system ordered by the proper State Officer.

Source: TURNER SPRINGS, tributary to TURNER CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Measured Distances
17 S	42 E	WM	2	S1/2 OF NW1/4

Authorized Place of Use:

IRRIGATION AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	42 E	WM	25	SW SE	10.0
16 S	43 E	WM	30	SW NW	1.0
16 S	43 E	WM	30	NW SW	2.0

5. Certificate 1120 does not describe the location of the point of diversion, however information is available from the water right application map and the transfer application which indicates that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	42 E	WM	2	SE NW	17,000 FEET SOUTH AND 23,500 FEET WEST OF THE EAST 1/16 TH CORNER OF SECTION 21, T 16 SOUTH, R 43 EAST, W.M. (ALSO DESCRIBED AS NORTH 85 DEGREES, 20 MINUTES EAST, 28 CHAINS FROM THE W¼ CORNER OF SECTION 2, T 17 SOUTH, R 42 EAST)

6. Application T-11148 proposes to change the place of use of the right to:

IRRIGATION AND DOMESTIC						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
16 S	42 E	WM	25	NE SE	9.0	2300
16 S	42 E	WM	25	NW SE	3.0	2300
16 S	43 E	WM	30	SW NW	1.0	1300

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

Certificate: 1620 in the name of J. B. TURNER (confirmed by Willow Creek, Malheur County)

Use: IRRIGATION of 225.0 ACRES AND LIVESTOCK AND DOMESTIC USE

Priority Date: 1898

Rate: 5.63 CUBIC FEET PER SECOND FROM FEBRUARY 15TH TO MAY 1ST AND 2.82 CUBIC FEET PER SECOND FROM MAY 1ST TO SEPTEMBER 1ST OF EACH YEAR AND FURTHER LIMITED TO 675 ACRE FEET.

Source: TURNER CREEK, tributary to WILLOW CREEK

Authorized Place of Use:

IRRIGATION, LIVESTOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	42 E	WM	25	NE SE	40.0
16 S	42 E	WM	25	NW SE	40.0
16 S	43 E	WM	30	SW NW	40.0
16 S	43 E	WM	30	SE NW	40.0
16 S	43 E	WM	30	NE SW	35.0
16 S	43 E	WM	30	NW SW	30.0
TOTAL ACRES:					225.0

8. Certificate 1620 does not describe the location of the point of diversion, however information is available from the transfer application and map which indicates that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
16 S	42 E	WM	25	NW SE	8,220 FEET SOUTH AND 17,520 FEET WEST FROM THE EAST 1/16 TH CORNER OF SECTION 21, T 16 SOUTH, R 43 EAST, W.M.

9. Application T-11148 proposes to change the place of use of the right to:

IRRIGATION, LIVESTOCK AND DOMESTIC						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
16 S	42 E	WM	25	SE NE	13.5	2300
16 S	42 E	WM	25	NE SE	12.0	2300
16 S	43 E	WM	29	NW NE	0.5	401
16 S	43 E	WM	29	NE NW	40.0	401
16 S	43 E	WM	29	NW NW	31.0	400
16 S	43 E	WM	29	SW NW	3.5	401
16 S	43 E	WM	30	NE NE	12.5	300
16 S	43 E	WM	30	SW NE	31.0	1200
16 S	43 E	WM	30	SE NE	15.5	1200
16 S	43 E	WM	30	SW NW	19.0	1300
16 S	43 E	WM	30	SE NW	24.0	1300
16 S	43 E	WM	30	NE SW	4.0	1300
16 S	43 E	WM	30	NW SW	18.5	1300
Total Acres:					225.0	

10. Notice of the application for transfer was published on November 2, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice
11. On March 5, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11148 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 5, 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)]

12. 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 rights are subject to forfeiture under ORS 540.610.
13. 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-11148.
14. The proposed change would not result in enlargement of the rights.
15. 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-11148 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.

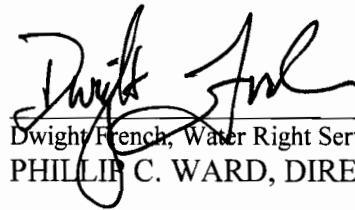
If Transfer Application T-11148 is approved, the final order will include the following:

1. *The change in place of use proposed in application T-11148 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 1120 and 1620 and any related decree.*
3. *Water right certificates 1120 and 1620 are cancelled.*
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. *When required by the Department, the water user shall install, maintain and operate a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.*
6. *The former place of use of the transferred rights shall no longer receive water under the rights.*
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 change and full beneficial use of the water.

8. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 13 day of February, 2013.



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.