



Oregon

John A. Kitzhaber, MD, Governor

August 15, 2013

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

VIA E-MAIL: jdd@emypeople.net

Applicants

JASON & CHARLEEN DERSTINE
83902 WINESAP RD.
MILTON-FREEWATER, OR 97862

Transfer Application T-11539

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11539. 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 30-day 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.

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: file T-11539
Tony G. Justus, District #5 Watermaster

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11539, Umatilla County)	PROPOSING APPROVAL OF
)	CHANGES IN PLACE OF USE AND
)	PARTIAL CANCELLATION OF A
)	WATER RIGHT

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

JASON AND CHARLEEN DERSTINE
83902 WINESAP RD.
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Findings of Fact

Background

1. On February 21, 2013, Jason Derstine filed an application to change the place of use under Certificates 86961 (supersedes 83960), 87556 (supersedes 85456) and 86964. The Department assigned the application number T-11539.
2. Notice of the application for transfer was published on March 5, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 18, 2013, the Department sent out a draft of the Preliminary Determination to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 17, 2013, 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.

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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4. The first primary water right and its layered supplemental water right to be transferred is as follows:

Certificate: 86961 in the name of PLEASANT VIEW IRRIGATION CO., c/o WALLA WALLA IRRIGATION DISTRICT (perfected under Permit S-1216)

Use: IRRIGATION of 1.0 ACRE

Priority Date: MARCH 25, 1912

Rate: 0.0125 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 acre irrigated during the irrigation season of each year.

Source: LITTLE WALLA WALLA RIVER, tributary to the WALLA WALLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
6 N	35 E	WM	35	SE SE	5 FEET NORTH AND 1100 FEET WEST FROM SE CORNER OF SECTION 35

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
6 N	35 E	WM	34	NW SW	1.0

Certificate: 86964 in the name of PLEASANT VIEW IRRIGATION DISTRICT, c/o WALLA WALLA IRRIGATION DISTRICT (perfected under Permit S-26001)

Use: SUPPLEMENTAL IRRIGATION of 1.0 ACRE

Priority Date: JANUARY 16, 1959

Rate: 0.025 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 0.0375 of one cubic foot per second per acre, or its equivalent for each acre irrigated during the irrigation season of each year.

Source: LITTLE WALLA WALLA RIVER, tributary to WALLA WALLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q
5 N	35 E	WM	2	NE NE

Authorized Places of Use:

IRRIGATION (IR) and SUPPLEMENTAL IRRIGATION (IS)						
Twp	Rng	Mer	Sec	Q - Q	Certificate (acres)	
					86961 (IR)	86964 (IS)
6 N	35 E	WM	34	NW SW	1.0	1.0

5. Transfer Application T-11539 proposes to change the place of use of the above described rights to:

Proposed Place of Use:

IRRIGATION (IR) and SUPPLEMENTAL IRRIGATION (IS)						
Twp	Rng	Mer	Sec	Q - Q	Certificate (acres)	
					86961 (IR)	86964 (IS)
6 N	35 E	WM	34	SE SE	1.0	1.0

6. The second primary right to be transferred is as follows:

Certificate: 87556 (supersedes 85456) in the name of HUDSON BAY DISTRICT IMPROVEMENT COMPANY (perfected under Permit S-43973)

Use: IRRIGATION of 1.0 ACRE

Priority Date: SEPTEMBER 28, 1978

Rate: 0.0275 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 0.0375 on one cubic foot per second per acre, or its equivalent for each acre irrigated during the irrigation season of each year.

Source: LITTLE WALLA WALLA RIVER, tributary to the WALLA WALLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
5 N	35 E	WM	1	NE NW	POD #1 – 910 FEET SOUTH AND 700 FEET WEST FROM N¼ CORNER OF SECTION 1
5 N	35 E	WM	12	SW NE	POD #2 – 1030 FEET NORTH AND 900 FEET EAST FROM CENTER OF SECTION 12

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
6 N	35 E	WM	34	SE SE	1.0

7. Transfer Application T-11539 proposes to change the place of use of the above described 1.0 acre to a different configuration within the same quarter quarter and Tax Lot to:

Proposed Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
6 N	35 E	WM	34	SE SE	1.0

8. This transfer shall be processed simultaneously with T-11046, to alleviate a layered situation with an existing water right on the proposed "TO" lands in this transfer application T-11539.

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

9. Water has been used within the last five years 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.

10. Diversion structures and ditches 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-11539.
11. The proposed change would not result in enlargement of the rights.
12. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

13. There is another layered water right for supplemental irrigation (Certificate 87770) on the Certificates 86961 and 86964 "FROM" lands. The landowners, Paul and Mary Zehr do not intend to transfer this portion of Certificate 87770 and on February 21, 2013, Paul and Mary Zehr submitted an affidavit to voluntarily cancel this 1.0 acre portion.

The portion of the following right is proposed to be cancelled:

Certificate: 87770 in the name of PAUL ZEHR and NITA STOCKE (perfected under permit G-13451)

Use: SUPPLEMENTAL IRRIGATION of 1.0 ACRE

Priority Date: JUNE 23, 1995

Rate: 0.013 cfs

Season of Use: March 1 through October 31

Source: ZEHR WELL within the PINE CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
6 N	35 E	WM	34	NW SW	ZEHR WELL - 950 FEET SOUTH AND 1220 FEET EAST FROM THE W¼ CORNER OF SECTION 34

Authorized Place of Use to be Cancelled:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	34	NW SW	1.0

Determination and Proposed Action

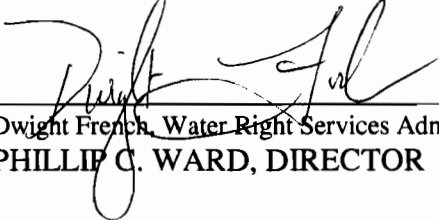
The changes in place of use proposed in Transfer Application T-11539 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the abandoned right will be cancelled.

If Transfer Application T-11539 is approved, the final order will include the following:

1. *The change in place of use proposed in application T-11539 is approved, concurrently with T-11046. The portion of the right that has been abandoned is cancelled.*
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 86961, 86964, 87556 and any related decree.*

3. *Water right Certificate 87770 is cancelled. A new certificate will be issued describing that portion of the right not affected by the partial cancellation due to abandonment.*
4. *Water right Certificates 86961, 86964, and 87556 are modified. The Department will issue superseding certificates describing the rights when it determines that it is necessary for record keeping.*
5. *The water user shall maintain and operated the existing measurement device and shall make such improvements as may be required by the Department.*
6. *The former place of use of the transferred rights shall no longer receive water under these 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 when the Department determines that it is necessary for record keeping.*

Dated at Salem, Oregon this 14 day of August, 2013.



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@ 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.