



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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September 19, 2013

Applicants

GEORGE AND MARCIA GOVER
PO BOX 881
HALFWAY, OR 97834

SUBJECT: Water Right Transfer Application T-11483

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11483. 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 503-986-0886 or Patrick.K.Starnes@wrds.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Specialist
Transfer and Conservation Section

cc: T-11483
Rick Lusk, District 8 Watermaster (*via e-mail*)
Tom Hanley, CWRE #241 (*via e-mail*)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11483, Baker County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE AND
)	CORRECTION OF SCRIVENOR'S
)	ERRORS

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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Findings of Fact

Background

1. On October 25, 2012, GEORGE AND MARCIA GOVER filed an application to change the place of use under Certificates 27737, 67383, and 80372. The Department assigned the application number T-11483.
2. Notice of the application for transfer was published on October 30, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 28, 2012, the Department sent a copy of a draft Preliminary Determination proposing to approve Transfer Application T-11483 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of December 27, 2012, for the applicants to respond. 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.
4. Department review of the draft document resulted in some formatting revisions and additional findings regarding corrections to one of the remaining right certificates that will

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.

be issued upon approval of the transfer. However, there were no changes that affected the determination to approve the transfer. These modifications are reflected in this document.

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

Certificate: 67383 in the name of PINE LAKES DITCH AND RESERVOIRS CO.
(perfected under Permit S-26491)

Use: PRIMARY IRRIGATION OF 61.4 ACRES AND SUPPLEMENTAL IRRIGATION, 38.7 ACRES

Priority Date: OCTOBER 7, 1959

Quantity: 1.29 CUBIC FEET PER SECOND from PINE CREEK and a portion of the 42.5 ACRE FEET from EAST LAKE RESERVOIR allowed under Certificate 67383 (together with the remaining portion of the right).

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, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: EAST LAKE RESERVOIR, tributary to the PINE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	45 E	WM	22	NE NE	POSEY VALLEY:170 FEET SOUTH & 200 FEET WEST FROM SE CORNER, SECTION 15
6 S	45 E	WM	10	SE NW	EAST LAKE RESERVOIR

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	46 E	WM	20	NE NE	2.00
8 S	46 E	WM	20	NW NE	20.94
8 S	46 E	WM	20	SW NE	20.96
8 S	46 E	WM	20	NE NW	13.50
8 S	46 E	WM	20	SE NW	4.00
Total Acres:					61.4

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	46 E	WM	20	NE NE	7.00
8 S	46 E	WM	20	NW NE	3.20
8 S	46 E	WM	20	SE NE	28.50
Total Acres:					38.7

6. Application T-11483 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	46 E	WM	20	NE NE	24.50
8 S	46 E	WM	20	NW NE	3.20
8 S	46 E	WM	20	SE NE	32.86
8 S	46 E	WM	20	SE NW	0.84
Total Acres:					61.4

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	46 E	WM	20	NE NE	2.00
8 S	46 E	WM	20	NW NE	18.34
8 S	46 E	WM	20	SW NE	18.00
8 S	46 E	WM	20	SE NE	0.36
Total Acres:					38.7

7. The source for this right is water stored under Permit R-2309 to be appropriated for irrigation and supplemental irrigation under Permit S-26491. Certificate 67383 (perfected under Permit S-26491) contains an error in the number of acre-feet of stored water available for this right, which should be corrected when a remaining right is issued for the portion of the right not transferred. The original storage certificate issued for Permit R-2309 (39118) was for 132.5 AF, however, on November 17, 1983, Certificate 39118 was cancelled and superseded by Certificate 51714, "to correctly describe the amount of water stored", and it reduced the volume to 42.5 AF. Therefore, when Certificate 67383 was issued on June 10, 1992, the maximum quantity of stored water available for appropriation from the reservoir for this right should have been listed as 42.5 AF, rather than 132.5 AF.

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

Certificate: 80372 in the name of H. JELDNESS (confirmed by Pine Creek Decree, Baker County)
Use: IRRIGATION of 38.7 ACRES
Priority Date: 1890
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, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 1.0 acre-feet per acre during July, 1.0 Acre foot per acre during August, and ½ acre foot per acre during September, for each acre irrigated during the irrigation season of each year.
Source: PINE CREEK, tributary of the SNAKE RIVER
Ditch: POSY VALLEY DITCH

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	46 E	WM	20	NE NE	7.0
8 S	46 E	WM	20	NW NE	3.2
8 S	46 E	WM	20	SE NE	28.5
Total Acres:					38.7

9. Certificate 80372 does not describe the location of the point of diversion, however information is available from Certificate 67383 indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	45 E	WM	22	NE NE	POSEY VALLEY:170 FEET SOUTH AND 200 FEET WEST FROM THE SE CORNER OF SECTION 15

10. Application T-11483 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	46 E	WM	20	NE NE	2.00
8 S	46 E	WM	20	NW NE	18.34
8 S	46 E	WM	20	SW NE	0.36
8 S	46 E	WM	20	SW NE	18.0
Total Acres:					38.7

11. The portion of the third right to be transferred is as follows:

Certificate: 27737 in the name of PINE LAKES DITCH & RESERVOIRS CO.
(confirmed by Pine Creek Decree, Baker County)
Use: SUPPLEMENTAL IRRIGATION of 38.7 ACRES
Priority Date: 1903
Quantity: 90.0 ACRE FEET
Source: UPPER TWIN LAKE, tributary to PINE CREEK

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	46 E	WM	20	NE NE	7.00
8 S	46 E	WM	20	NW NE	3.2
8 S	46 E	WM	20	SE NE	28.5
Total Acres:					38.7

12. Application T-11483 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	46 E	WM	20	NE NE	2.0
8 S	46 E	WM	20	NW NE	18.34
8 S	46 E	WM	20	SW NE	18.0
8 S	46 E	WM	20	SE NE	0.36
Total Acres:					38.7

13. Certificate 27737 includes some errors that affect the portion of the right that will remain untransferred. These errors should be corrected in the record when a remaining right certificate is issued.
14. Certificate 27737 was issued for supplemental irrigation and storage from Upper Twin Lake, Lower Twin Lake and East Lake. The Pine Creek Decree states that the supplemental right granted in response to Proof #322 is “to supplement direct flow rights of about sixty users, upon an aggregate of about 3,300 acres”. The decree does not list the lands by section quarter quarter, but relies upon the decree listing of the primary acres. Certificate 27737, which was issued for the supplemental right, lists the primary rights from the decree that Certificate 27737 is to supplement, including the names of landowners, primary certificate numbers, priority dates and the names of ditch diversions.
15. One of the listed primary certificates is Certificate 10357 (resulting from Proofs #195 (priority 1890 from Posey Valley Ditch) and #197 (priority 1883 from Foot Hills Ditch), in the name of H. Jeldness). A comparison of the listings of the supplemental lands in Certificate 27737 with the decree listing for primary Certificate 10357, shows the land and ditch listings are identical, with one exception: 5.0 acres in the SW¹/₄ NE¹/₄ of Section 20, T8S, R46E in the decree listing for primary Certificate 10357 is missing from the listing in supplemental Certificate 27737.
16. Both certificates rely on the 1924 Pine Creek adjudication survey map, which shows the 5.0 acres in SW¹/₄ NE¹/₄ of Section 20, T8S, R46E hatchured identically with the rest of the right. This leads the Department to conclude that the supplemental right was intended to overlap all of the adjudicated lands referenced on Certificate 10397, and that the omission of the row of type containing the 5.0 acres in SW¹/₄ NE¹/₄ of Section 20 is a scrivener’s error that should be corrected in the record.
17. The place of use for the primary adjudicated right, Certificate 80372 (formerly evidenced by Certificate 10357), as stated in the Pine Creek Decree, and the place of use for the supplemental irrigation as listed on Certificate 27737 is as follows. The place of use in bold type is the place of use in question.

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Primary Acres under Certificate 80357 (from decree tabulation)	Supplemental Acres under Certificate 27737
7 S	46 E	WM	29	NW NW	5.0	5.0
7 S	46 E	WM	29	SW NW	15.0	15.0
8 S	46 E	WM	17	SW NE	17.0	17.0
8 S	46 E	WM	17	SW NW	13.5	13.5
8 S	46 E	WM	17	SE NW	38.0	38.0
8 S	46 E	WM	17	NE SW	13.0	13.0
8 S	46 E	WM	17	NW SE	39.0	39.0
8 S	46 E	WM	17	SW SE	30.0	30.0
8 S	46 E	WM	20	NE NE	8.4	8.4
8 S	46 E	WM	20	NW NE	7.2	7.2
8 S	46 E	WM	20	SW NE	5.0	**
8 S	46 E	WM	20	SE NE	30.6	30.6

** scrivener's omission of 5.0 acres.

18. A decree correction was issued (Volume 19, Page 96) for 1874 primary lands under original Certificate 10347 that were also covered by supplemental irrigation under Certificate 27737. A new primary certificate was issued that reflects the correction (Certificate 87646), but the supplemental certificate was not superseded to reflect the correction. This should also be reflected in the remaining right certificate for the portion of Certificate 27737 not affected by T-11483.
19. Two orders of the Department, recorded at Special Order Volume 33, Page 402 and Volume 37, Page 73, purport to cancel portions of Certificate 27737, however, the lands described in the orders do not appear in Certificate 27737, so these orders will not affect the remaining right certificate.

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

20. 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.
21. A pump, pipeline, and sprinkler system 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-11483.
22. The proposed change would not result in enlargement of the rights.
23. The proposed change would not result in injury to other water rights.

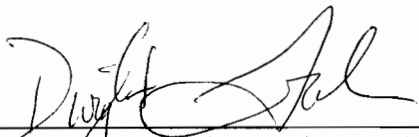
Determination and Proposed Action

The change in place of use proposed in Transfer Application T-11483 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-11483 is approved, the final order will include the following:

- 1. The change in place of use proposed in application T-11483 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 27737, 67383, and 80372 and any related decree.*
- 3. Water right Certificates 27737, 67383, and 80372 are cancelled. New certificates will be issued describing the portions of the rights not affected by this transfer, including the corrections described above in Findings of Fact #7 and #13-#19.*
- 4. The portion of stored water from East Lake transferred under the right evidenced by Certificate 67383, together with portion remaining under new Certificate xxxxx, shall be limited to 42.5 AF. The portion of stored water from East Lake transferred under the right evidenced by Certificate 27737, together with the portion remaining under new Certificate yyyyy, shall be limited to 90.0 AF.*
- 5. The former place 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, 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.*

Dated at Salem, Oregon this 19 day of September, 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@ 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.