



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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December 13, 2013

VIA E-MAIL

Jennifer D. & James D. Cline JR
22598 S Lewellen RD
Beavercreek, OR 97004-8732

SUBJECT: Water Right Transfer Application T-11603

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11603. 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 **Nugget 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.

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 503-986-0892 or Joan.M.Smith@ wrd.state.or.us if I may be of assistance.

Sincerely,

Joan Smith
Transfer Specialist
Transfer and Conservation Section

cc: T-11603
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)
Michele W. Sims, Agent for the applicant (*via e-mail*)
Three Sisters Irrigation District (*via e-mail*)



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

In the Matter of Transfer Application)
T-11603, Deschutes County)
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PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A
CHANGE IN CHARACTER OF USE
FROM SUPPLEMENTAL USE TO
PRIMARY USE, AND
CANCELLATION OF AN ENTIRE
WATER RIGHT

Authority

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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.

Applicants

JENNIFER D. AND JAMES D. CLINE JR
22598 S. LEWELLEN RD.
BEAVERCREEK, OR 97004-8732

Findings of Fact

1. On May 22, 2013, Doug and Barbara Burke filed an application to change the character of use of Certificate 85968 from supplemental to primary irrigation, upon cancellation of the primary right for those lands. The Department assigned the application number T-11603.
2. On September 9, 2013, the transfer application was assigned to James D. Cline Jr. and Jennifer D. Cline.
3. James D. Cline Jr. and Jennifer D. Cline will be responsible for completion of the changes.
4. Notice of the application for transfer was published on May 28, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
5. On October 24, 2013, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11603 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of November 25, 2013, for the applicants to respond. The applicants requested that the Department proceed with issuance of a

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.

Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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

Certificate: 85968 in the name of DOUG AND BARBARA BURKE (perfected under Permit G-7092)

Use: SUPPLEMENTAL IRRIGATION of 11.3 ACRES

Priority Date: DECEMBER 26, 1976

Rate: 0.11 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together is limited to a diversion of ONE-EIGHTIETH 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Period of Use: During the irrigation season of each year.

Source: A WELL within the WHYCHUS CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	26	SE NE	130 FEET NORTH AND 290 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 26

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	26	SE NE	5.4
15 S	10 E	WM	26	NE SE	5.9

7. Transfer Application T-11603 proposes to change the character of use from supplemental to primary use on the following lands.

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	26	SE NE	5.4
15 S	10 E	WM	26	NE SE	5.9

Transfer Review Criteria (OAR 690-380-4010)

8. Water has been used within the last five years prior to the submittal of Transfer Application T-11603 according to the terms and conditions of the right. Certificate 85968 was issued December 18, 2009, proving that water was used within five years. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
9. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-11603.

10. The Watermaster reviewed Transfer Application T-11603 and stated the surface water is only available during approximately one month per year. Therefore, the supplemental water right has been used to the full extent authorized under the right.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

Cancellation of a Water Right

14. On May 7, 2013, an affidavit certifying that an entire water right has been abandoned and requesting cancellation of the right was received from Doug and Barbara Burke. The right to be cancelled is as follows:

Certificate: 86387 in the name of WELDON WANKIER (confirmed by Squaw Creek Decree)
Use: IRRIGATION of 11.3 ACRES
Priority Date: NOVEMBER 1904
Rate: 0.225 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.
Period of Use: During the irrigation season.
Source: WHYCHUS CREEK, tributary to the DESCHUTES RIVER

Authorized Point of Diversion to be Cancelled:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	29	SW SE	710 FEET NORTH AND 2640 FEET WEST FROM THE SE CORNER OF SECTION 29

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	26	SE NE	5.4
15 S	10 E	WM	26	NE SE	5.9

15. A letter was received from Three Sisters Irrigation District, dated May 28, 2013, approving the cancellation of Certificate 86387.

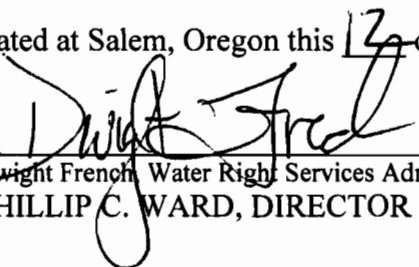
Determination and Proposed Action

The change in character of use from supplemental to primary irrigation proposed in Transfer Application T-11603 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000, and the abandoned primary right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned the right will be cancelled.

If Transfer Application T-11603 is approved, the final order will include the following:

- 1. The change in character of use from supplemental to primary irrigation proposed in Transfer Application T-11603 is approved. The abandoned primary right Certificate 86387 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 Certificate 85968 and any related decree.*
- 3. Water right Certificate 85968 is cancelled. A new certificate will be issued to describe that portion of Certificate 85968 not affected by this transfer.*
- 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 each point of appropriation (existing).*
 - 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. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2015**. 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.*
- 6. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 17 day of December, 2013.



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

*Protests should be addressed to the attention of Transfer and Conservation
Section, Water Rights Services Division, Water Resources Department, 725
Summer St. NE, Suite A, Salem, OR 97301-1266.*