



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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January 14, 2014

WILLIAM G. AND DONNA D. TSIATSOS
53540 BASELINE LANE
LA GRANDE, OR 97850

SUBJECT: Water Right Transfer Application T-11622

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11622. 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@ wrd.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Analyst
Transfer and Conservation Section

cc: Transfer Application file T-11622
Shad L. Hattan, District 6 Watermaster (*via e-mail*)
Gregory T. Blackman, Agent/CWRE for the applicant (*via e-mail*)

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

In the Matter of Transfer Application)
T-11622, Union County)
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PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A
CHANGE IN PLACE OF USE AND A
CHANGE IN POINT OF DIVERSION

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.

Applicants

WILLIAM G. AND DONNA D. TSIATSOS
53540 BASELINE RD.
LA GRANDE, OR 97850

Findings of Fact

Background

1. On June 24, 2013, William G. and Donna D. Tsiatsos filed an application to change the point of diversion and place of use under Certificate 85560. The Department assigned the application number T-11622.
2. Notice of the application for transfer was published on July 2, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 10, 2013, Transfer Application T-11596 was filed. This transfer modifies the same right proposed in T-11662. Certificate 85560 shall be canceled after both transfer applications are processed.

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. On November 27, 2013, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11622 to the applicants and agent. The draft Preliminary Determination cover letter set forth a deadline of December 27, 2013, for the applicants to respond. On December 3, 2013, the applicants requested the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate the applicants are authorized to pursue the transfer.
5. The portion of the right to be transferred is as follows:

Certificate: 85560 in the name of ORODELL DITCH ASSOCIATION (confirmed by Grande Ronde River, Consolidated)

Use: IRRIGATION of 11.5 ACRES

Priority Date: 1872

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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: GRANDE RONDE RIVER, tributary to the SNAKE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Ditch Name
2 S	38 E	WM	31	SW SW	ORODELL DITCH

Authorized Place of Use:

IRRIGATION					
1		Mer	Sec	Q-Q	Acres
2 S	38 E	WM	27	NW SE	11.5

6. This right is further limited by the Grande Ronde River Consolidated decree stating that the Orodell Ditch Association is entitled to divert 100 miner's inched between September first of each year and May first of the following year, 500 miner's inches between May first and July first of each year, and 200 miner's inches between July first and September first of each year, but at no time shall said Orodell Ditch Association divert more than half of the flow of the Grande Ronde River.
7. Transfer Application T-11622 proposes to change the point of diversion upstream because of federal highway re-alignment to within the same quarter quarter to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	38 E	WM	31	SW SW	1858.33 FEET SOUTH AND 80.84 FEET EAST FROM THE W¼ CORNER OF SECTION 31

8. Transfer Application T-11622 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Tax Lot#	Q-Q	Acres
2 S	38 E	WM	31	600	NE NE	9.85
2 S	38 E	WM	31	200	NE NE	1.65

9. The Oregon Department of Fish and Wildlife has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is currently equipped with an appropriate fish screen.

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

10. 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 right is subject to forfeiture under ORS 540.610.
11. A diversion structure, ditch, re-diversion structure and booster pump sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11622.
12. The proposed changes would not result in enlargement of the right.
13. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The changes in place of use and point of diversion proposed in Transfer Application T-11622 appear 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-11622 is approved, the final order will include the following:

1. *The changes in place of use and point of diversion proposed in Transfer Application T-11622 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 Certificate 85560 and any related decree.*
3. *Water Right Certificate 85560 is modified and will be canceled upon approval or denial of T-11596. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *The water user shall maintain and operate a fish screening and/or by-pass device as appropriate, at the point of diversion consistent with Oregon Department of Fish and Wildlife's operational and maintenance standards.*
6. *The former place of use of the transferred right shall no longer receive water under the right.*

7. *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 changes and full beneficial use of the water.*
8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 10 day of January, 2014.


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.