



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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January 15, 2014

RICK HUFSTADER
CYNTHIA E. STRICKLAND
PO BOX NK116
NAUKATI, AK 99950

SUBJECT: Water Right Transfer Application T-11454

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11454. 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 Blue Mountain Eagle 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 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 503-986-0886 or Patrick.K.Starnes@wr.d.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Analyst
Transfer and Conservation Section

cc: Transfer Application file T-11454
Eric W. Julsrud, District 4 Watermaster (via e-mail)
Kyle Sullivan, Agent for the applicant (via e-mail)
Gary Wilson, CWRE #4009 (via e-mail)

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

In the Matter of Transfer Application)
T-11454, Grant County)
)
) **PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A
CHANGE IN POINT OF DIVERSION
AND 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.

Applicant

RICK A. HUFSTADER
CYNTHIA E. STRICKLAND
P.O. BOX NK116
NAUKATI, ALASKA 99950

Agent

KYLE SULLIVAN
GRANT COUNTY SWCD
721 SOUTH CANYON BLVD.
JOHN DAY, OR 97845

Findings of Fact

Background

1. On August 1, 2012, Rick Hufstader and Cynthia Strickland filed an application to change the point of diversion and to change the place of use under Certificate 86539. The Department assigned the application number T-11454.
2. Notice of the application for transfer was published on August 7, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 27, 2013, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11454 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 28, 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. The agent for the applicant also requested the proposed point of diversion description be corrected to better describe and reflect the application and application map.

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.

4. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device 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.
5. The portion of the right to be transferred is as follows:

Certificate: 86539 in the name of KATHERINE GEISLER (perfected under Permit S-18828)
Use: IRRIGATION OF 7.4 ACRES
Priority Date: JUNE 28, 1949
Rate: 0.185 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, shall be limited to ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 5.0 acre-feet per acre for each acre irrigated during the irrigation season from April 1 to September 30 of each year.
Source JOHN DAY RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	29 E	WM	27	NW NE	50 FEET SOUTH AND 3380 FEET EAST FROM THE NW CORNER OF SECTION 27

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	29 E	WM	18	SW SE	5.6
13 S	29 E	WM	18	SE SE	1.0
13 S	29 E	WM	19	NW NE	0.8
TOTAL					7.4

6. Certificate 86539 describes the location of the point of diversion in relation to a survey corner in Section 27, of Township 13 South, Range 29 East. The POD is described as within the NW¹/₄ of the NE¹/₄ within Section 27. However, information is available from the current map prepared by the applicant's Certified Water Rights Examiner based on a recent field visit and subsequent survey indicating that the point of diversion is northeast approximately 150 feet from the original POD, and is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	29 E	WM	22	SW SE	80 FEET NORTH AND 3590 FEET EAST FROM THE SW CORNER OF SECTION 22

7. Transfer Application T-11454 proposes to change the place of use within the same quarter quarters located:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	29 E	WM	18	SW SE	5.6
13 S	29 E	WM	18	SE SE	1.0
13 S	29 E	WM	19	NW NE	0.8
TOTAL					7.4

8. Transfer Application T-11454 also proposes to change the point of diversion downstream approximately 4 miles to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	29 E	WM	18	SW SE	590 FEET NORTH AND 1980 FEET WEST FROM THE SE CORNER SECTION 18

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 right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
10. A diversion structure and ditch 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-11454.
11. The proposed changes would not result in enlargement of the right.
12. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The change in point of diversion and change in place of use proposed in Transfer Application T-11454 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-11454 is approved, the final order will include the following:

1. *The changes in point of diversion and place of use proposed in Transfer Application T-11454 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 86539 and any related decree.*
3. *Water Right Certificate 86539 is cancelled. 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. *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 the new point of diversion.*
 - 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 are located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *The water user shall operate and maintain an approved fish screen at the new point of diversion. If Oregon Department of Fish and Wildlife (ODFW) determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.*
7. *The former place of use of the transferred right shall no longer receive water under the right.*
8. *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.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 14 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.