



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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January 28, 2014

VIA E-MAIL

TRAVIS HARRISON
P.O. BOX 393
LEXINGTON, OR 97839

SUBJECT: Water Right Transfer Application T-11512

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11512. 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 East Oregonian 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@wrд.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application fileT-11512
Ken Thiemann, District 21 Watermaster (*via e-mail*)
William I. Porfily, Agent for the applicant (*via e-mail*)
Dale G. VanSchoiack, CWRE # 333 (*via-e-mail*)
Shonee D. Langford, Attorney for Willow Cr. District Improvement Co. (*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-11512, Morrow County) PROPOSING APPROVAL OF CHANGES
) 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

Travis Harrison
P.O. Box 393
Lexington, OR 97839

Agent

Bill Porfily
P.O. Box 643
Stanfield, OR 97875

Findings of Fact

Background

1. On December 24, 2012, Travis Harrison filed an application to change the point of diversion and place of use under Certificate 194. The Department assigned the application number T-11512.
2. On January 24, 2013, the applicant amended the application to include a layered supplemental water right permit, Permit 54770. A proposed change in point of diversion for this permit has already been applied for in Permit Amendment T-11664.
3. Notice of the application for transfer was published on January 8, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. The primary right and its layered supplemental water right to be transferred are as follows:
 - Certificate:** 194 in the name of RHODA A. SUMMER (confirmed by Decree of the Circuit Court of the State of Oregon for Morrow County)
 - Use:** IRRIGATION OF 40.0 ACRES during the period March 1 to August 1 of each year
 - Priority Dates:** 1872 for 5.0 acres and 1905 for 35.0 acres
 - Rate:** 0.08 CUBIC FOOT PER SECOND (CFS) (PRIORITY DATE 1872) and 0.58 CFS (PRIORITY DATE 1905)
 - Source:** WILLOW CREEK, tributary to the COLUMBIA RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
1 S	25 E	WM	20	SW NW	5.0
1 S	25 E	WM	20	SE NW	5.5
1 S	25 E	WM	20	NE SE	2.5
1 S	25 E	WM	20	NW SE	7.0
1 S	25 E	WM	20	SE SE	7.0
1 S	25 E	WM	21	SW SW	13.0
TOTAL:					40.0

Permit: S-54770 in the name of Willow Creek District Improvement Company
Use: IRRIGATION AND SUPPLEMENTAL IRRIGATION OF 40.0 ACRES

Maximum

Volume: 39.4 ACRE FEET

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall not exceed 3.0 acre feet per acre for each acre irrigated during the irrigation season of each year.

Period of Use: Primary Irrigation August 2 through October 31, Supplemental Irrigation March 1 through August 1

Source: WILLOW CREEK RESERVOIR (CONSTRUCTED UNDER PERMIT R-10880), tributary to WILLOW CREEK

Authorized Dam Location:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	26 E	WM	35	NW SE	1530 FEET NORTH AND 3050 FEET EAST FROM THE SW CORNER OF SECTION 35

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	25 E	WM	20	NW SE	HARRISON POD 2 - 1695 FEET NORTH AND 1325 FEET WEST FROM THE SE CORNER OF SECTION 20

Authorized Place of Use:

PRIMARY IRRIGATION AND SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	25 E	WM	20	SW NW	5.0
1 S	25 E	WM	20	SE NW	5.5
1 S	25 E	WM	20	NE SE	2.5
1 S	25 E	WM	20	NW SE	7.0
1 S	25 E	WM	20	SE SE	7.0
1 S	25 E	WM	21	SW SW	13.0
TOTAL:					40.0

5. Certificate 194 does not describe the location of the point of diversion, however information is available from a Final Order of the Special Order record Vol. 8, Pages 333 to 334 approving a change in point of diversion for the entire water right Certificate 194 upstream on Willow Creek to a point located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	25 E	WM	28	NE NW	560 FEET SOUTH AND 1920 FEET EAST FROM THE NW CORNER OF SECTION 28

6. Transfer Application T-11512 proposes to change the point of diversion for Certificate 194 downstream approximately 4000 feet to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
1 S	25 E	WM	20	NW SE	1560 FEET NORTH AND 1320 FEET WEST FROM THE SE CORNER OF SECTION 20

7. Transfer Application T-11512 also proposes to change the place of use of the above described water rights to:

PRIMARY IRRIGATION AND SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
1 S	25 E	WM	20	SW NW	3.5
1 S	25 E	WM	20	SE NW	6.0
1 S	25 E	WM	20	NE SE	8.4
1 S	25 E	WM	20	NW SE	6.0
1 S	25 E	WM	20	SE SE	5.0*
1 S	25 E	WM	21	SW SW	11.1
TOTAL:					40.0

*Note: 5.0 acres (priority date = 1872)

8. 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)]

9. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the records that would demonstrate that the rights are 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 rights were present within the five-year period prior to submittal of Transfer Application T-11512.
11. The proposed changes would not result in enlargement of the rights.
12. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

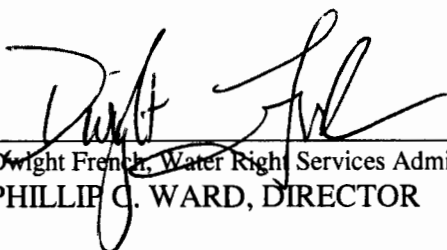
The changes in point of diversion and place of use proposed in T-11512 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-11512 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-11512 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 194 and any related decree.*
3. *Water right certificate 194 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 each new point of diversion.*
 - b. *The water user shall maintain the meter(s) or measuring device(s) in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter(s) or measuring device(s); provided however, where the meter(s) or measuring device(s) is/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 rights shall no longer receive water under the rights.*
8. *Permit S-54839, in the name of Willow Creek District Improvement Company, is issued to replace Permit S-54770, and incorporates the change in place of use approved by this order and the order issued for Permit Amendment T-11664. Permit S-54770, in the name of Willow Creek District Improvement Company, is no longer of any force or effect.*

9. *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.*
10. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 27 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@wrds.state.or.us.