



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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January 29, 2014

C. BRUCE AND SHERRIE ANNE SCHWARZ
P.O. BOX 2069
THE DALLES, OR 97058

SUBJECT: Water Right Transfer Application T-11470

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11470. 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 Dalles Chronicle 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@wrd.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application fileT-11470
Bob Wood, District 3 Watermaster (*via e-mail*)
Larry Toll, Tenneson Engineering Corp., 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-11470, Wasco County)
)
)

PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A
CHANGE IN PLACE OF USE AND
CHARACTER OF USE

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.

Applicant

C. BRUCE & SHERRIE ANNE SCHWARTZ
PO BOX 2069
THE DALLES, OR 97058

Agent

LARRY TOLL
TENNESON ENGINEERING CORP.
3313 WEST SECOND STREET, SUITE 100
THE DALLES, OR 97058

Findings of Fact

Background

1. On September 6, 2013, Bruce and Sherrie Schwartz filed an application to change the place of use and the character of use under portions of Certificates 33343 and 60431. The Department assigned the application number T-11470.
2. Notice of the application for transfer was published on September 11, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 12, 2013, the Department mailed a copy of the Preliminary Determination proposing to approve transfer application T-11470 to the applicants. The Preliminary Determination set forth a deadline of October 12, 2013, for the applicants to respond. On October 3, 2013, the agent, on behalf of the applicants, requested corrections to the draft of the Preliminary Determination dropping language from each certificate referring to the irrigation and groundwater use for the equivalent 2.0 acres of irrigation at the new place of use and use (filling and maintenance of nine ponds). The applicants also requested a completion date of October 1, 2017 to complete the transfer. The applicants requested 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.

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

Certificate: 33343 in the name of ROBERT E. AND ARTHUR E. SANDERS (perfected under Permit G-1466)
Use: IRRIGATION OF 2.0 ACRES
Priority Date: OCTOBER 12, 1959
Rate: 0.012 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-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; provided further that in the event the operation of this well results in reduction of the natural flow of Threemile Creek, the water from said well in addition to that appropriated within the limitations of the duty of water as fixed herein shall be discharged as ordered by the Watermaster into the channel of Threemile Creek in the amount necessary to offset such reduction and provided further that the amount of water rediverted from the channel of Threemile Creek shall not exceed the amount by which the flow of Threemile Creek at the point of rediversion is increased above the natural flow by the operation of said well
Source: SANDERS WELL within the COLUMBIA RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	13 E	WM	33	NW SW	310 FEET SOUTH AND 78 FEET EAST FROM THE W¼ CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	13 E	WM	33	SW NW	2.0

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

Certificate: 60431 in the name of HELEN F. SANDERS (perfected under Permit G-8540)
Use: SUPPLEMENTAL IRRIGATION OF 2.0 ACRES
Priority Date: MARCH 11, 1977
Rate: 0.006 CUBIC FOOT PER SECOND
Limit/Duty: Limited to a diversion of not to exceed 1.0 acre foot per acre for each acre irrigated during the period from October 1 to March 31, provided further that the right allowed herein, together with the amount secured under any other right existing for the same land, shall not exceed 3.0 acre feet for each acre irrigated in anyone year. The use of water during the period from October 1 to March 31 as

authorized herein shall not establish priority of right as against future appropriations of ground water for beneficial uses other than similar rights for irrigation from October 1 to March 31. The use allowed herein may be made anytime between October 1 and March 31, when water can be put to beneficial use by irrigation, either for immediate crop growth or for forecast requirements to raise the soil moisture to field capacity in the soil profile to be utilized by plant growth in the subsequent growing year

Source: A WELL within the THREEMILE CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
1 N	13 E	WM	33	NW SW	310 FEET SOUTH AND 78 FEET EAST FROM THE W¼ CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
1 N	13 E	WM	33	SW NW	2.0

6. Transfer Application T-11470 proposes to change the character of use and place of use of the above described water rights from irrigation to the filling and maintenance of nine ponds located:

POND STORAGE AND MAINTENANCE					
Twp	Rng	Mer	Sec	Q-Q	Pond No. and Measured Distances
1 N	13 E	WM	33	N½ SW	POND #1 – 630 FEET SOUTH AND 1200 FEET EAST FROM THE W¼ CORNER OF SECTION 33
1 N	13 E	WM	33	NE SW	POND #2 – 210 FEET SOUTH AND 1705 FEET EAST FROM THE W¼ CORNER OF SECTION 33
1 N	13 E	WM	33	NW SW	POND #3 – 655 FEET SOUTH AND 940 FEET EAST FROM THE W¼ CORNER OF SECTION 33
1 N	13 E	WM	33	NW SW	POND #4 – 650 FEET SOUTH AND 660 FEET EAST FROM THE W¼ CORNER OF SECTION 33
1 N	13 E	WM	33	NW SW	POND #5 – 380 FEET SOUTH AND 140 FEET EAST FROM THE W¼ CORNER OF SECTION 33
1 N	13 E	WM	33	NW SW	POND #6 – 310 FEET SOUTH AND 790 FEET EAST FROM THE W¼ CORNER OF SECTION 33
1 N	13 E	WM	33	NW SW	POND #7 – 75 FEET SOUTH AND 1050 FEET EAST FROM THE W¼ CORNER OF SECTION 33
1 N	13 E	WM	33	SW NW	POND #8 – 310 FEET NORTH AND 870 FEET EAST FROM THE W¼ CORNER OF SECTION 33
1 N	13 E	WM	33	SW NW	POND #9 – 175 FEET NORTH AND 185 FEET EAST FROM THE W¼ CORNER OF SECTION 33

Transfer Review Criteria (OAR 690-380-4010)

7. Water has been used within the last five years prior to the submittal of Transfer Application T-11470 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.

8. A well, 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-11470.
9. The proposed change would not result in enlargement of the rights, provided the annual volume of water diverted for filling and pond maintenance does not exceed 6.0 acre feet total, and restricted to only 2.0 acre feet total during the period October 1 through March 31 of each year for nine ponds. The Department has also determined that the language contained in the rate and duty clause of Certificate 33343 is a "measure in"/"measure out" directive addressing the conveyance of water downstream on Threemile Creek for the supplemental water right portion and should not carry forward on the perfection of the pond filling and maintenance of the ponds "TO" lands and subsequent confirming right certificate.
10. The proposed change would not result in injury to other water rights.
11. All other application requirements are met.

Determination and Proposed Action

The change in place of use and character of use proposed in Transfer Application T-11470 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-11470 is approved, the final order will include the following:

1. *The change in place of use and character of use proposed in Transfer Application T-11470 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 33343 and 60431 and any related decree.*
3. *Water right certificate 33343 and 60431 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
4. *The former place of use of the transferred rights shall no longer receive water under the right*
5. *The proposed change would not result in enlargement of the rights, provided the annual volume of water diverted for filling and pond maintenance does not exceed 6.0 acre feet total, and restricted to only 2.0 acre feet total during the period October 1 through March 31 of each year for nine ponds.*

6. *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(s); provided however, where the meter or measuring device is/are located within a private structure, the Watermaster shall request access upon reasonable notice.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. 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, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 29 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.