



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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April 11, 2014

SAM ELLIOTT
23789 GAP RD
HARRISBURG, OR 97446

SUBJECT: Water Right Transfer Application T-11683

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11683. 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 Albany Democrat Herald 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 503-986-0890 or Sarah.A.Henderson@ wrd.state.or.us if I may be of assistance.

Sincerely,

Sarah Henderson
Transfer Specialist
Transfer and Conservation Section

cc: T-11683
Michael Mattick, District 2 Watermaster (*via e-mail*)
Joel Plahn, Assistant Watermaster District 16 (*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-11683, Linn County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN CHARACTER 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

SAM ELLIOTT
23789 GAP RD
HARRISBURG, OR 97446

Findings of Fact

1. On November 7, 2013, Sam Elliott filed an application to change the character of use under Certificate 40206. The Department assigned the application number T-11683.
2. Notice of the application for transfer was published on November 19, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 23, 2014, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11683 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 24, 2014, for the applicant to respond.
4. On February 16, 2014, the applicant requested that the date the full beneficial use of the water shall be made by, be extended to October 1, 2020.
5. On February 16, 2014, 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.
6. The right to be transferred is as follows:

Certificate: 40206 in the name of W.D. & NORMA M. GANN (perfected under Permit R-5585)
Use: FIRE PROTECTION, FISH CULTURE, RECREATION
Priority Date: SEPTEMBER 21, 1970

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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Rate: 32.2 ACRE FEET (AF), BEING 24.2 AF IN RESERVOIR NO. 1, AND 8.0 AF IN RESERVOIR NO. 2
Source: UNNAMED STREAM, tributary of LITTLE MUDDY CREEK (appropriated under Application R-47545, Permit R-34888 in two reservoirs)

Authorized Place of Use:

FISH CULTURE, FIRE PROTECTION, RECREATION					
Twp	Rng	Mer	Sec	Q-Q	DLC
15 S	3 W	WM	1	NE SE	40
15 S	3 W	WM	1	SW SE	40
15 S	3 W	WM	1	SE SE	40

7. Transfer Application T-11683 proposes to change the character of use to multi-purpose storage including but not limited to fish culture, recreation and fire protection.

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

8. 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.
9. A diversion structure 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-11683.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

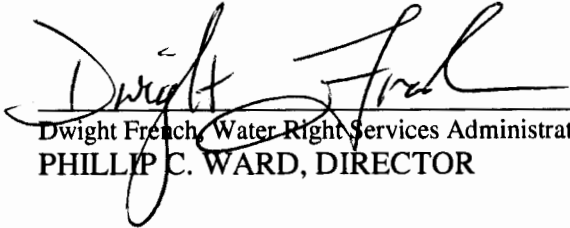
The change in character of use proposed in Transfer Application T-11683 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-11683 is approved, the final order will include the following:

- 1. The change in character of use proposed in Transfer Application T-11683 is 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 40206 and any related decree.*
- 3. Water right certificate 40206 is cancelled.*
- 4. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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.*

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

Dated at Salem, Oregon this 15 day of April, 2014.


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

This Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-986-0890 or Sarah.A.Henderson@ wrd.state.or.us.

Protests should be addressed to the attention of Water Right Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

