



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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May 2, 2014

VIA E-MAIL

DAVID AND MARGARET BUCHANAN, TRUSTEES
26355 GREENBERRY RD
CORVALLIS, OR 97333

SUBJECT: Water Right Transfer Application T-11730

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11730. 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 Tracy.L.Fox@wr.d.state.or.us or 503 986-0827 if I may be of assistance.

Sincerely,

Ms. Tracy Fox
Transfer Specialist
Transfer and Conservation Section

cc: T-11730
District 16 Watermaster (*via e-mail*)
Tyler B. Parsons, CWRE #217 (*via e-mail*)
Greenberry Irrigation District (*via email*)

enclosure

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-11730, Benton County) PROPOSING APPROVAL OF A
) CHANGE IN 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.

Applicants

DAVID V. AND MARGARET S. BUCHANAN, TRUSTEES
26355 GREENBERRY RD
CORVALLIS, OR 97333

Findings of Fact

1. On January 21, 2014, DAVID V. AND MARGARET S. BUCHANAN filed an application to change the place of use under Certificate 33400. The Department assigned the application number T-11730.
2. Notice of the application for transfer was published on February 4, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 27, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11730 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 30, 2014, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
4. The right to be transferred is as follows:

Certificate:	33400 in the name of VARDYN F. AND MARY J. BUCHANAN (perfected under Permit S-27612)
Use:	IRRIGATION of 26.0 ACRES
Priority Date:	SEPTEMBER 18, 1961
Rate:	0.33 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-EIGHTIETH of one cubic foot per second per acre, or its equivalent

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.

for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.

Source: BEAVER CREEK, a tributary of MUDDY CREEK, MARYS RIVER AND WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	5 W	WM	8	SW NE	1930 FEET WEST AND 440 FEET NORTH FROM THE SW CORNER OF HARRIS DLC 43

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
13 S	5 W	WM	8	NE NE		0.6
13 S	5 W	WM	8	NW NE		12.2
13 S	5 W	WM	8	SW NE	3	13.2

- The Certified Water Rights Examiner provided information describing the point of diversion under Certificate 33400 as being:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	5 W	WM	8	SW NE	1940 FEET WEST AND 440 FEET NORTH FROM THE SW CORNER OF DLC 43 (440 FEET NORTH AND 380 FEET EAST FROM THE NE CORNER OF DLC 41)

- Transfer application T-11730 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
13 S	5 W	WM	5	SE SW	2	0.6
13 S	5 W	WM	5	SW SE		4.4
13 S	5 W	WM	8	NW NE		2.8
13 S	5 W	WM	8	NE NW	1	15.2
13 S	5 W	WM	8	SE NW	2	3.0

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

- Water has been used within the last five years on 3.4 of the 26.0 acres involved in this transfer 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.
- Water may not have been used on 22.6 acres according to the terms and conditions of the right within the five years prior to submittal of the transfer application. However, these acres are part of the Wetland Reserve Program with the Natural Resources Conservation Service. The applicant, therefore, has sufficiently rebutted the presumption of forfeiture in accordance with ORS 540.610(2)(e).

9. A pump, pipeline, and sprinkler system sufficient to use the amount of water allowed under the existing right, for the land that is not part of the Wetland Reserve Program, was present within the five-year period prior to submittal of Transfer Application T-11730.
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 place of use proposed in Transfer Application T-11730 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-11730 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-11730 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 33400 and any related decree.*
3. *Water Right Certificate 33400 is cancelled.*
4. *The former place of use of the transferred right shall no longer receive water under the right.*
5. *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.*
6. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 1 day of May, 2014.



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

This Preliminary Determination was prepared by Tracy Fox. If you have questions about the information in this document, you may reach me at 503 986-0827 or Tracy.L.Fox@ wrd.state.or.us.

Protests should be addressed to the Water Rights Services Division, Oregon Water Resources Department, 725 Summer Street, Suite A, Salem, OR 97301-1266.