



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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May 8, 2014

ROGER OLSEN, OLSEN AGRICULTURAL ENTERPRISES
JENKS OLSEN LAND CO.
8930 SUVER RD
MONMOUTH, OR 97361

SUBJECT: Water Right Transfer Application T-11741

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11741. 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 Polk County Itemizer-Observer 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 Tracy.L.Fox@wrđ.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-11741
District 16 Watermaster (*via e-mail*)
Kim Grigsby, Agent for the applicant (*via e-mail*)
Theodore Ressler, CWRE #78185 (*via e-mail*)

enclosure

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

In the Matter of Transfer Application) **PRELIMINARY DETERMINATION**
T-11741, Polk 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

ROGER OLSEN, OLSEN AGRICULTURAL ENTERPRISES
JENKS OLSEN LAND CO.
8930 SUVER RD
MONMOUTH, OR 97361

Findings of Fact

1. On February 10, 2014, ROGER OLSEN, OLSEN AGRICULTURAL ENTERPRISES/ JENKS OLSEN LAND CO., filed an application to change the character of use under Certificate 40468. The Department assigned the application number T-11741.
2. Notice of the application for transfer was published on February 18, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The applicant initially proposed to change the character of use to irrigation but amended the application on March 13, 2014, to change the character of use to multipurpose storage.
4. On March 24, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11741 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 24, 2014, 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.
5. The right to be transferred is as follows:
Certificate: 40468 in the name of RALPH & OPAL KESTER (perfected under Permit R-5715)

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.

Use: STORAGE FOR IRRIGATION, FISH CULTURE, AND RECREATION
Priority Date: AUGUST 17, 1970
Limit/Duty: The amount of water entitled to be stored each year under such right, for the purposes afore-said, shall not exceed 24.9 ACRE FEET, BEING 6.0 ACRE FEET FOR IRRIGATION AND 18.9 ACRE FEET FOR RECREATION AND FISH CULTURE
Source: BERRY CREEK, tributary of SOAP CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	5 W	WM	3	NE SE	970 FEET SOUTH AND 240 FEET WEST FROM THE E1/4 CORNER OF SECTION 3

The reservoir is located in:

STORAGE				
Twp	Rng	Mer	Sec	Q-Q
10 S	5 W	WM	2	NE SW
10 S	5 W	WM	2	NW SW

- Transfer Application T-11741 proposes to change the character of use to MULTIPURPOSE STORAGE, including, but not limited to IRRIGATION, FISH CULTURE, AND RECREATION.

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

- 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.
- A diversion structure sufficient to store the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11741.
- The proposed change would not result in enlargement of the right.
- 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-11741 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-11741 is approved, the final order will include the following:

- The change in character of use proposed in Transfer Application T-11741 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 40468 and any related decree.*
3. *Water right certificate 40468 is cancelled.*
4. *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.*
5. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 7 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.