



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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June 17, 2014

VIA E-MAIL

STEVEN HEBERT
14982 HWY 42
MYRTLE POINT, OR 97458-9834

SUBJECT: Water Right Transfer Application T-11662

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11662. 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 Coos Bay's The World 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@ wrd.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-11662
Mitch E. Lewis, District 19 Watermaster (*via e-mail*)
Corey Woodruff, CWRE #62978 (*via e-mail*)
L. Sue Powrie, Commenter

enclosures

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

In the Matter of Transfer Application) **PRELIMINARY DETERMINATION**
T-11662, Coos County) **PROPOSING APPROVAL OF A**
) **CHANGE IN POINT OF DIVERSION**

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

STEVEN HEBERT
14982 HWY 42
MYRTLE POINT, OR 97458-9834

Findings of Fact

1. On September 5, 2013, STEVEN HEBERT filed an application to change the point of diversion under Certificate 6424. The applicant filed using an “Application for Water Right Exchange.” The Department assigned the application number T-11662.
2. Notice of the application for transfer was published on September 17, 2013, pursuant to OAR 690-380-4000. One comment, by L. Sue Powrie, was filed in response to the notice.
3. Issues raised in the comment included the following:
 - a) Concern that the diameter of the pipeline (the water delivery system) was inaccurately stated in the transfer application, implying that water has reached the end of the pipeline year-round for the life of the right.
 - b) Additional storage tanks have been added to the delivery system over the last four years, showing that insufficient water was available for all users.
 - c) The water delivery system crosses Powrie’s property to get to the applicant’s property. Powrie will not grant access to the applicant’s to her property if the transfer is approved.
 - d) A new pipeline would need to be constructed that would be partially on State of Oregon highway right-of-way.

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.

- e) Concern that the transfer will diminish the applicant's personal and financial responsibility to inspect, maintain and repair the pipeline in accordance with a 1926 water rotation agreement. This would set a precedent for other parties of the water rotation agreement to possibly separate from the agreement thus increasing responsibility of the remaining parties.
4. None of the issues raised by the commenter are relevant to the criteria for review of a water right transfer as per OAR 690-380-4010. The issues noted in Finding of Fact #3, though important to L. Sue Powrie, do not directly relate to the transfer review criteria.
 5. On January 31, 2014, the Department requested by written correspondence that the application be re-submitted on an "Application for Permanent Water Right Transfer." The application was received on the correct form on March 24, 2014.
 6. On May 12, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11662 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 12, 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.
 7. On May 16, 2014, the Department sent a revised copy of the draft Preliminary Determination proposing to approve Transfer Application T-11662 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 16, 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.
 8. The portion of the right to be transferred is as follows:

Certificate: 6424 in the name of T. M. STOVER, G. H. GUERIN, JR, J. T. GUERIN, E. M. HOFFMAN, AND E. F. HOFFMAN (perfected under Permit S-2346)

Use: DOMESTIC USE

Priority Date: JANUARY 15, 1915

Rate: 0.0182 CUBIC FOOT PER SECOND

Source: SPRING NO. 1 AND SPRING NO. 2, tributary to MILL CREEK

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q
29 S	12 W	WM	23	NW NE
29 S	12 W	WM	23	NW NE

Authorized Place of Use:

DOMESTIC			
Twp	Rng	Mer	Sec
29 S	12 W	WM	22
29 S	12 W	WM	23

DOMESTIC			
Twp	Rng	Mer	Sec
29 S	12 W	WM	27

9. Information is available from the applicant that further describes the authorized points of diversion being located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
29 S	12 W	WM	23	NW NE	SOUTH 50 DEGREES 30 MINUTES AND EAST 548 FEET FROM THE NORTH ¼ CORNER OF SECTION 23

10. Transfer Application T-11662 proposes to move the authorized point of diversion approximately 1.66-1.72 miles from the two springs to the downstream river to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
29 S	12 W	WM	27	NW NW	880 FEET SOUTH AND 1280 FEET EAST OF THE NW CORNER OF SECTION 27

11. The Oregon Department of Fish and Wildlife (ODFW) 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 not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

12. 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.
13. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-11662.
14. The proposed change, as conditioned, would not result in enlargement of the right.
15. The proposed change, as conditioned, would not result in injury to other water rights.

Determination and Proposed Action

The change in point of diversion proposed in Transfer Application T-11662 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-11662 is approved, the final order will include the following:

- 1. The change in point of diversion proposed in Transfer Application T-11662 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 6424 and any related decree.*
- 3. Water right certificate 6424 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 points 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 or measuring device in good working order.*
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
- 6. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If 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.
- 6. The water user had agreed to install a flow restrictor at the new point of diversion by October 1, 2015. The work shall be done under the general supervision of the Department.*
- 7. 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.*

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

Dated at Salem, Oregon this 19 day of June 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@wrds.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.