



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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August 28, 2014

VIA E-MAIL

JOHN F. BRYAN, TRUSTEE
BRYAN REVOCABLE TRUST
PO BOX 720
SELMA, OR 97538

SUBJECT: Water Right Transfer Application T-11777

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11777. 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 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-11777
Kathy A. Smith, District 14 Watermaster (via e-mail)
Norm Daft, Agent for the applicant (via e-mail)

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

In the Matter of Ground Water)	PRELIMINARY DETERMINATION
Registration Modification Application)	PROPOSING APPROVAL OF
T-11777, Josephine County)	RECOGNITION OF MODIFICATIONS
)	IN POINT OF APPROPRIATION AND
)	PLACE OF USE

Authority

ORS 537.610, 537.705 and 540.505 to 540.580 establish the process in which the holder of a certificate of registration may submit a request for recognition of modifications to the place of use, character of use or point of appropriation under a ground water certificate of registration.

OAR Chapter 690, Divisions 382 and 380 implement the statutes and provide the Department's procedures and criteria for evaluating ground water registration modification applications.

Applicant

JOHN F. BRYAN, TRUSTEE
BRYAN REVOCABLE TRUST
PO BOX 720
SELMA, OR 97538

Findings of Fact

1. On March 31, 2014, JOHN F. BRYAN, TRUSTEE OF BRYAN REVOCABLE TRUST filed a ground water registration modification application to modify the point of appropriation and place of use under Registration Application GR-2748 (Certificate of Registration GR-2599). The Department assigned the application number T-11777.
2. On March 31, 2014, Registration Application GR-2748 (Certificate of Registration GR-2599) was partially assigned from LESTER A. FROST to JOHN F. BRYAN, TRUSTEE, BRYAN REVOCABLE TRUST.
3. Notice of the application for ground water registration modification was published on April 8, 2014, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
4. On August 5, 2014, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11777 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 4, 2014, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination, submitted additional fees, and corrections 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.

5. The portion of the ground water registration to be modified is as follows:

Registration: Registration Application GR-2748 (Certificate of Registration GR-2599), in the name of LESTER A. FROST (*partially assigned to JOHN F. BRYAN, TRUSTEE, BRYAN REVOCABLE TRUST*)

Use: IRRIGATION of 34.0 ACRES

Tentative

Priority Date: JULY 1, 1949

Quantity: 305 GALLONS PER MINUTE

Duty: 0.68 CUBIC FOOT PER SECOND

Source: A SUMP within the DEER CREEK BASIN

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	7 W	WM	7	SE SE	2240 FEET NORTH AND 250 FEET WEST FROM THE E1/4 CORNER OF SECTION 18

Original Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	7 W	WM	7	SE SE	12.0
38 S	7 W	WM	8	SW SW	2.0
38 S	7 W	WM	18	NE NE	17.0
38 S	7 W	WM	18	NW NE	3.0

6. Ground Water Registration Modification Application T-11777 proposes to modify the location of the original point of appropriation approximately 963 feet from the original well to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	7 W	WM	7	SE SE	2660 FEET NORTH AND 1120 FEET WEST FROM THE E1/4 CORNER OF SECTION 18

7. Ground Water Registration Modification Application T-11777 proposes to modify the place of use under the ground water registration to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	7 W	WM	7	SW SE	0.8
38 S	7 W	WM	7	SE SE	0.3
38 S	7 W	WM	18	NE NE	15.8
38 S	7 W	WM	18	NW NE	5.6
38 S	7 W	WM	18	SW NE	3.0
38 S	7 W	WM	18	SE NE	8.5

8. The Department determined that a portion of the land to which Registration Application GR-2748 (Certificate of Registration GR-2599) is proposed to move is already covered by portions of Registration Application GR-2749 (Certificate of Registration GR-2600) for irrigation use. The overlapping portions are as follows:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	7 W	WM	18	SW NE	3.0
38 S	7 W	WM	18	SE NE	8.5

9. Upon the issuance of a final order approving Ground Water Registration Modification Application T-11777, the portions of Registration Application GR-2748 (Certificate of Registration GR-2599) and Registration Application GR-2749 (Certificate of Registration GR-2600) that are appurtenant to the same place of use, as described in Finding #8, will become “layered” as defined by OAR 690-380-0100(4).
10. The Department is hereby notifying the applicant that, in accordance with OAR 690-380-2240, any future changes in place of use or character of use to the right evidenced by Registration Application GR-2748 (Certificate of Registration GR-2599) may only be approved if concurrent changes to the “layered” portion of the ground water registration (described in Finding #8) are also recognized or if affidavits of voluntary cancellation for the “layered” portion of the ground water registration are submitted.

Review Criteria for Ground Water Registration Modification Applications [OAR 690-382-0700(2)]

11. The proposed modifications would not result in enlargement of the ground water registration.
12. The proposed modifications would not result in a state Scenic Waterway not receiving previously available water during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835.
13. The proposed modifications would not result in injury to other water rights.

Determination and Proposed Action

The modification in point of appropriation and modification in place of use proposed in Ground Water Registration Modification T-11777 appear to be consistent with the requirements of ORS 537.610, 537.705, 540.505 to 540.580 and OAR 690-382-1000. If protests are not filed pursuant to OAR 690-380-4030, the modifications will be approved.


If Ground Water Registration Modification T-11777 is approved, the final order will include the following:

1. *The modifications to Registration Application GR-2748 (Certificate of Registration GR-2599) proposed in Ground Water Registration Modification Application T-11777 are recognized. Recognition of the modifications shall not be construed as a final determination of the right to appropriate ground water under the certificate of registration or*

modification. Such a determination will occur in an adjudication proceeding under ORS 537.670 to 537.695.

2. *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 Registration Application GR-2748 (Certificate of Registration GR-2599) and any related decree.*
3. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
4. *Water shall no longer be appropriated from the original point of appropriation as part of this ground water certificate of registration.*
5. *The former place of use of the modified ground water registration shall no longer receive water as part of the ground water certificate of registration.*
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 each new point of appropriation.*
 - 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.*

Dated at Salem, Oregon this 27 day of August, 2014.


Dwight French, Water Right Services Division Administrator, for
Director, Oregon Water Resources Department

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@wrds.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.