



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

August 29, 2014

VIA E-MAIL

70 Ranch, Inc.
James McNeley
22013 Thomas Creek RD
Lakeview, OR 97630

SUBJECT: Water Right Transfer Application T-11748

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11748. 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 Lake County Examiner 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 Department's notice *or* 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 503-986-0892 or Joan.M.Smith@wrd.state.or.us if I may be of assistance.

Sincerely,

Joan Smith
Transfer Specialist

cc: T-11748
Brian M. Mayer, District 12 Watermaster (*via e-mail*)
Anderson Engineering And Surveying Inc, Agent for the applicant (*via e-mail*)
Darryl J. Anderson, CWRE #005 (*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-11748, Lake County) PROPOSING APPROVAL OF A
) CHANGE IN POINTS 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

70 RANCH INC.
JAMES MCNELEY
22013 THOMAS CREEK ROAD
LAKEVIEW, OR 97630

Findings of Fact

1. On March 3, 2014, 70 RANCH INC., JAMES MCNELEY filed an application to change the points of diversion under Certificates 5242 and 5220. The Department assigned the application number T-11748.
2. Notice of the application for transfer was published on March 11, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 30, 2014, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11748 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 30, 2014, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information including an addendum to the application and a new application map to demonstrate that the applicant is authorized to pursue the transfer.
4. The portion of the first right to be transferred is as follows:

Certificate: 5242 in the name of P.W. HOTCHKISS (confirmed by Goose Lake Decree)
Use: IRRIGATION AND STOCK USE
Priority Date: APRIL 21, 1871

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.

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed three-fourths acre foot per acre during any 30-day period prior to June 1st, and one-half acre foot per acre during any 30-day period after June 1st, of each year; and two and one-half acre-feet per acre during any irrigation season; to be diverted under a head of not to exceed one-fortieth of a second foot per acre.

Source: SOUTH FORK OF THOMAS CREEK (41.5 ACRES) AND NORTH FORK OF THOMAS CREEK (78.6 ACRES), both tributary to THOMAS CREEK

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Not Specified in Certificate					ROAD CO. HERYFORD DITCH, NORTH FORK THOMAS CREEK
Not Specified in Certificate					DAMS & NATURAL FLOODING, SOUTH FORK THOMAS CREEK

Authorized Place of Use:

IRRIGATION								
POD#	Twp	Rng	Mer	Sec	Q-Q	Ditch-Source	Stream	Acres
POD 2	38 S	19 E	WM	24	NE NE	Road Co. Heryford Ditch	North Fork Thomas Creek	5.0
POD 2	38 S	19 E	WM	24	SE NE	Road Co. Heryford Ditch	North Fork Thomas Creek	33.6
POD 2	38 S	20 E	WM	19	SW NW	Road Co. Heryford Ditch	North Fork Thomas Creek	35.0
POD 2	38 S	20 E	WM	19	NW SW	Road Co. Heryford Ditch	North Fork Thomas Creek	5.0
POD 1	38 S	20 E	WM	19	NW SW	Dams & Natural Flooding	South Fork Thomas Creek	23.0
POD 1	38 S	20 E	WM	19	SW SW	Dams & Natural Flooding	South Fork Thomas Creek	18.50
Total								120.10

5. Certificate 5242 does not describe the location of the points of diversion, however information is available from the transfer map and application for T-11748 describing the locations of POD 1 and Existing POD 2 as follows:

Authorized Point of Diversion:

POD #	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD 1	38S	20E	WM	19	SW SW	Not Specified on Certificate
Existing POD 2	38S	19E	WM	24	NE SW	168 FEET SOUTH AND 2631 FEET EAST FROM THE W¼ CORNER OF SECTION 24

6. Transfer Application T-11748 proposes to move authorized POD 1 approximately 3,700 feet downstream, and to move authorized POD 2 approximately 700 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38S	19E	WM	24	NE SW	27 FEET SOUTH AND 1916 FEET EAST FROM THE W¼ CORNER OF SECTION 24

7. The second right to be transferred is as follows:

Certificate: 5220 in the name of E.M. ANDERSON (confirmed by Goose Lake Decree)

Use: IRRIGATION of 10 ACRES AND STOCK

Priority Date: April 21, 1871

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed three-fourths acre foot per acre during any 30-day period prior to June 1st, and one-half acre foot per acre during any 30-day period after June 1st, of each year; and two and one-half acre-feet per acre during any irrigation season; to be diverted under a head of not to exceed one-fortieth of a second foot per acre.

Source: NORTH FORK OF THOMAS CREEK, tributary to THOMAS CREEK

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	20 E	WM	19	N½ OF THE N½ OF THE NWSW	10

8. Certificate 5220 does not describe the location of the point of diversion, however information available from the transfer map and application for T-11748 describing the location of POD 1 as follows:

POD #	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD 1	38S	20E	WM	19	SW SW	Not Specified on Certificate

9. Transfer Application T-11748 proposes to move POD 1 approximately 3,700 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38S	19E	WM	24	NE SW	27 FEET SOUTH AND 1916 FEET EAST FROM THE W¼ CORNER OF SECTION 24

10. 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)]

11. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
12. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11748.
13. The proposed changes would not result in enlargement of the rights.
14. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action


The changes in points of diversion proposed in Transfer Application T-11748 appear 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-11748 is approved, the final order will include the following:

1. *The change in points of diversion proposed in Transfer Application T-11748 are 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 Certificates 5242 and 5220 and any related decree.*
3. *Water right certificates 5242 and 5220 are cancelled. A new certificate will be issued describing those portions of the rights 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 weir, Parshall Flume, or submerged orifice, or, with prior approval of the Director, another suitable measuring device, at each point of diversion (new and existing).*
 - b. *The water user shall maintain the meters or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.*
7. *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.*
8. *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.*

9. *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.*
10. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 29 day of August 2014.



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

This Preliminary Determination was prepared by Joan Smith. If you have questions about the information in this document, you may reach Joan Smith at 503-986-0892 or Joan.M.SMITH@wrд.state.or.us

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