



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

September 4, 2014

Applicant

MAYNARD F. ALVES
16301 NW ONEIL HWY
REDMOND, OR 97756

Receiving Landowner

BILLIE ESTRIDGE
15333 NW ONEIL HWY
REDMOND, OR 97756

SUBJECT: Water Right Transfer Application T-11740

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11740. 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 Frontier Advertiser 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 if I may be of assistance.

Sincerely,

Sarah Henderson
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-11740
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)
John A. Short, Agent for the applicant (*via e-mail*)
Gary L. DeJarnatt, CWRE #033
Peoples Irrigation Company

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11740, Crook County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF DIVERSION
)	AND 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.

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Findings of Fact

1. On February 10, 2014, MAYNARD F. ALVES filed an application to change the point of diversion and to change the place of use under Certificate 87549. The Department assigned the application number T-11740.
2. Billie Estridge is the receiving landowner who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on February 18, 2014, pursuant to OAR 690-380-4000.
4. On April 17, 2014, the Oregon Department of Fish and Wildlife commented on the pending Instream Water Right Application IS-70354 as being injured by Transfer Application T-11740. Since IS-70354 is a water right application, by definition, it is not subject to injury.
5. On June 3, 2014, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11740 to the applicant and receiving landowner. The draft Preliminary Determination cover letter set forth a deadline of July 7, 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. The Peoples Irrigation Company also gave consent 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.

6. The portion of the right to be transferred is as follows:

Certificate: 87549 in the name of PEOPLES IRRIGATION CO. (confirmed by Crooked River Decree)
Use: IRRIGATION of 15.0 ACRES
Priority Date: 1904, 1910
Rate: 0.19 CUBIC FEET 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.
Source: CROOKED RIVER, a tributary of the DESCHUTES RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	16 E	WM	8	NW SW	POD 1: 1920 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 8
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Authorized Place of Use:

POD	Twp	Rng	Mer	Sec	Q-Q	Acres
1	14 S	14 E	WM	21	NW SW	1.8
1	14 S	14 E	WM	21	SW SW	3.2
1	14 S	14 E	WM	21	NE SE	7.2
2	14 S	14 E	WM	21	SW SE	1.0
1	14 S	14 E	WM	21	SE SE	1.8
Total						15.0

7. Certificate 87549 does not describe the exact location of the POD 2, however information is available from the applicant and from Certificate 83443, indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	14 E	WM	23	NE SE	POD 2: 950 FEET SOUTH AND 1060 FEET WEST FROM THE E 1/4 CORNER OF SECTION 23

8. Transfer Application T-11740 proposes to move the authorized points of diversion approximately 15.5 miles downstream from POD 1 and 2.32 miles downstream from POD 2 to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	14 E	WM	22	NW SW	1400 FEET NORTH AND 1250 FEET EAST FROM THE SW CORNER OF SECTION 22

9. Transfer Application T-11740 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	14 E	WM	22	NE SW	15.0

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 right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
12. A diversion structure sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11740.
13. The proposed changes would not result in enlargement of the right.
14. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action


The change in points of diversion and change in place of use proposed in Transfer Application T-11740 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-11740 is approved, the final order will include the following:

1. *The change in points of diversion and change in place of use proposed in Transfer Application T-11740 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 Certificate 87549 and any related decree.*
3. *Water right Certificate 87549 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, together with that diverted at the original points 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 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.*
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.*
7. *The former place of use of the transferred right shall no longer receive water under the right.*
8. *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 changes and full beneficial use of the water.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 4 day of September, 2014.


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

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Sarah Henderson at 503-986-0890 or Sarah.A.Henderson@wrđ.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.