



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department
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September 18, 2014

VIA E-MAIL

WESKE-WINDFLOWER REVOCABLE
LIVING TRUST
PO BOX 218
PHILOMATH, OR 97370

SUBJECT: Water Right Transfer Application T-11495

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11495. 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-11495
Joel Plahn, District 16 Watermaster (*via e-mail*)
Keren Fleck-Harding, Agent for the applicant (*via e-mail*)
Xanthippe Augerot, Agent for the applicant (*via e-mail*)
Walter Trimmer, CWRE # (*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-11495, Benton 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.

Applicant

WESKE-WINDFLOWER REVOCABLE LIVING TRUST
PO BOX 218
PHILOMATH, OR 97370

Findings of Fact

1. On November 30, 2012, WESKE-WINDFLOWER REVOCABLE LIVING TRUST filed an application to change the point of diversion under Certificate 42989. The Department assigned the application number T-11495.
2. Notice of the application for transfer was published on December 11, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 21, 2012, the Department contacted Xanthippe Augerot, by email to notify the applicant's agent of the deficiencies in the application. The Department requested that the deficiencies be resolved by January 31, 2013.
4. On February 19, 2013, the Department received the amended application pages, application map and additional fees pertaining to the place of use change added to the application.
5. On March 20, 2014, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11495 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 21, 2014, for the applicant to respond. The applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer and requested that the Department extend the deadline to August 15, 2014 for the issuance of a Preliminary Determination.

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.
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6. On August 29, 2014, the Department received the approval from the applicant to move forward with the issuance of the Preliminary Determination.

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

Certificate: 42989 in the name of MILTON E. ROWLAND (perfected under Permit S-36801)

Use: FISH CULTURE AND IRRIGATION of 0.5 ACRE

Priority Date: JUNE 28, 1973

Rate: 0.011 CUBIC FOOT PER SECOND, being 0.005 cfs from Greasy Creek for fish culture and 0.006 cfs from Greasy Creek for irrigation

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated from direct flow and shall be further limited to a diversion of not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from reservoir constructed under Permit No. R-5972, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Source: GREASY CREEK and MILTS POND constructed under application No. R-50764, Permit No. R-5972, a tributary of MARY'S RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	6 W	WM	6	SW NE	CREEK: 2370 FEET SOUTH AND 390 FEET EAST FROM THE N1/4 CORNER OF SECTION 6

Authorized Place of Use:

FISH CULTURE				
Twp	Rng	Mer	Sec	Q-Q
13 S	6 W	WM	6	SW NE

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	6 W	WM	6	SW NE	0.5

8. Certificate 42989 describes the location of the point of diversion, however information is available from the Applicant and Agent indicating that the point of diversion is more accurately described as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	6 W	WM	6	SW NE	CREEK: 400 FEET NORTH AND 490 FEET EAST FROM THE CENTER OF SECTION 6

9. Transfer Application T-11495 proposes to move the point of diversion approximately 379 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	6 W	WM	6	SW NE	CREEK: 220 FEET NORTH AND 150 FEET EAST FROM THE CENTER OF SECTION 6

10. Transfer Application T-11495 also proposes to change the place of use of the right within:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	6 W	WM	6	SW NE	0.5

11. The Oregon Department of Fish and Wildlife 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 currently equipped with an appropriate fish screen.

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

12. Water has been used within the five-year period prior to submittal of the transfer application 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-11495.
14. The proposed change would not result in enlargement of the right.
15. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The change in point of diversion and change in place of use proposed in Transfer Application T-11495 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-11495 is approved, the final order will include the following:

1. *The change in point of diversion and change in place of use proposed in Transfer Application T-11495 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 42989 and any related decree.*
3. *Water right certificate 42989 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 point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *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.*
6. *The water user shall operate and maintain an approved fish screen at the new point of diversion. If Oregon Department of Fish and Wildlife (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, 2016**. 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 17 day of September, 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@ wrd.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.