



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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November 14, 2014

VIA E-MAIL

JAMES M. AND ADELE KAY RODRIGUEZ YOUNG
46912 OLIVER ROAD
HALFWAY OR 97834
jim.kay.young@gmail.com

SUBJECT: Water Right Transfer Application T-11746

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11746. 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 Hells Canyon Journal 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 503-986-0886 or Patrick.K.Starnes@ wrd.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Specialist

cc: Transfer Application file T-11746
Rick Lusk, District 8 Watermaster (*via e-mail*)
Nancy Rorick, Agent/CWRE for the applicant (*via nrorick@yahoo.com*)
encs

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11746, Baker County	)	PROPOSING APPROVAL OF AN
	)	ADDITIONAL 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

JAMES M. AND ADELE KAY RODRIGUEZ YOUNG
46912 OLIVER RD
HALFWAY, OR 97834

Agent

NANCY RORICK CONSULTING
645 L LOOP
BAKER CITY, OR 97814

Findings of Fact

1. On February 27, 2014, James M. And Adele Kay Rodriguez Young filed an application for an additional point of diversion under Certificate 10226. The Department assigned the application number T-11746.
2. Notice of the application for transfer was published on March 4, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 20, 2014, the Department sent a copy of the Draft Preliminary Determination proposing to approve Transfer Application T-11746 to the applicants. The Preliminary Determination cover letter set forth a deadline of November 17, 2014, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants authorized to pursue the transfer.
4. On November 5, 2014, the applicants requested to extend the completion date to October 1, 2023.

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

Certificate: 10226 in the name of ROSETTA BROKAW (confirmed by Pine Creek decree, Baker County)
Use: IRRIGATION OF 40.0 ACRES, LIVESTOCK, AND DOMESTIC USE
Priority Date: 1894
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-FORTIETH 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 1.0 acre-feet per acre during July, 1.0 acre foot during August, and ½ acre foot per acre during September of each year.
Source: EAST PINE CREEK, tributary to PINE CREEK

Authorized Place of Use:

IRRIGATION, LIVESTOCK AND DOMESTIC USE					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	46 E	WM	3	SE NW	40.0

6. Certificate 10226 does not describe the location of the point of diversion, however information is available from the transfer application and map indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	46 E	WM	3	SE NW	FIVE POINT DITCH – 2090 FEET EAST AND 400 FEET NORTH OF THE SW CORNER OF SECTION 20

7. Transfer Application T-11746 proposes an additional point of diversion approximately 1 1/3 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
7 S	46 E	WM	32	NE NE	100	OLIVER DITCH (aka H.K. OLIVER DITCH) – Latitude: 44°55'03.4510"N Longitude: 117° 06'29.25834"W

8. The Oregon Department of Fish and Wildlife (ODFW) 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)]

9. 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.
10. A diversion structure and ditch 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-11746.
11. The proposed change would not result in enlargement of the right.

12. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The additional point of diversion proposed in Transfer Application T-11746 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-11746 is approved, the final order will include the following:

1. *The additional point of diversion proposed in Transfer Application T-11746 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 10226 and any related decree.*
3. *Water right certificate 10226 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 additional 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. *Water use measurement conditions:*
 - a. ***Before water use may begin** under this order, the water user shall install a **weir, parshall flume, ramp flume** or, with prior approval of the Director, another suitable measuring device, at the additional point of diversion.*
 - b. *The water user shall maintain the measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the measuring device; provided however, where the 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 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.*

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.

8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 13 day of November, 2014.


Dwight French, Water Right Services Administrator, for
TOM M. BYLER, DIRECTOR

This Preliminary Determination was prepared by Carrie Matthews. If you have questions about the information in this document, you may reach me at 541-523-8224 x 223 or Carrie.R.Matthews@wrdd.state.or.us.

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