



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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December 15, 2014

Applicant

Mark and Miriah Golter
605 SW 37th Street
Pendleton, OR 97801

Agent

Paul Wattenburger, CWRE
500 North 1st Street
Hermiston, OR 97838

SUBJECT: Water Right Transfer Application T-11773

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11773. 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 503-986-0886 or Patrick.K.Starnes@ wrd.state.or.us, if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Application file T-11773
Greg Silbernagel, District 5 Watermaster (*via e-mail*)

encs

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	32 E	WM	16	NW NW	4.0

4. Certificate 84250 describes the location of the authorized point of diversion in relation to a survey corner in Section 16, of Township 2 North, Range 32 East. The POD is described as within the NW¼ of the NW¼, Section 16. However, information is available from the current map prepared by the applicant's Certified Water Rights Examiner based on a recent field visit and subsequent survey indicating that the actual, existing point of diversion is southwest approximately 60 feet from the original authorized POD, and is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	32 E	WM	16	NW NW	625 FEET SOUTH AND 800 FEET EAST FROM THE NW CORNER OF SECTION 16

5. Transfer Application T-11773 proposes an additional point of diversion downstream approximately 350 feet located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	32 E	WM	16	NW NW	595 FEET SOUTH AND 490 FEET EAST FROM THE NW CORNER OF SECTION 16

6. 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.
7. On October 15, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11773 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of November 14, 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 are authorized to pursue the transfer.

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

8. 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.
9. A diversion structure, 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-11773.
10. The proposed change would not result in enlargement of the right.
11. 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-11773 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-11773 is approved, the final order will include the following:

- 1. The additional point of diversion proposed in Transfer Application T-11773 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 84250 and any related decree.*
- 3. Water right certificate 84250 is cancelled.*
- 4. The quantity of water diverted at the new 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 totalizing flow meter, or, with prior approval of the Director, another suitable measuring device at each new point of diversion.*
 - 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. 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 change and full beneficial use of the water.*

8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 15 day of December 2014.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@wrд.state.or.us.