



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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January 9, 2015

VIA E-MAIL

Ralph Staver
3247 NW Vaughn St
Portland OR 97210

Wade and Colleen Avery
1583 Palmer Creek Rd
Jacksonville OR 97530

SUBJECT: Water Right Transfer Application T-11726

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11726. 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 Medford Mail Tribune, 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 Tracy.L.Fox@ wrd.state.or.us or 503 986-0827 if I may be of assistance.

Sincerely,

Ms. Tracy Fox
Transfer Specialist
Transfer and Conservation Section

cc: T-11726
Travis Kelly, District 13 Watermaster (*via e-mail*)
Herb Farber, CWRE and Agent for the applicant (*via e-mail*)

enclosure

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11726, Jackson County)	PROPOSING APPROVAL OF
)	CHANGES IN POINTS OF DIVERSION
)	AND ADDITIONAL 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

RALPH STAVER
3247 NW VAUGHN ST
PORTLAND, OR 97210

Applicants

WADE AND COLLEEN AVERY
1583 PALMER CREEK RD
JACKSONVILLE OR 97530

Findings of Fact

1. On January 17, 2014, RALPH STAVER AND WADE AVERY filed an application to change the point of diversion under Certificate 19687, and add additional points of diversion under Certificates 43759, and 57584. The Department assigned the application number T-11726.
2. Notice of the application for transfer was published on February 4, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 30, 2014, the Department contacted the applicant's agent by telephone and by written correspondence to notify the applicants of deficiencies in the application. The deficiencies included, but were not limited to: the application should not include Certificate 57584, however it should include Certificate 57255; there were quarter quarters that were mis-labeled; the acres on the application and map were not all labeled; not all of the point of diversions were shown on the transfer map and it was not clear what changes the applicants wanted to make. The Department requested that the deficiencies be resolved by July 31, 2014. After additional communication and upon additional requests the date was eventually extended to October 8, 2014. On September 26, 2014, the Department received amended application pages and a revised map resolving the deficiencies. One of the revisions added Colleen Avery as an applicant.

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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4. On October 9, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11726 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of November 10, 2014, for the applicants to respond. Upon request of the applicants, the deadline was extended to December 10, 2014. 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.

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

Certificate: 19687 in the name of MRS. JOHN S. BYRNE (perfected under Permit S-17667)

Use: IRRIGATION of 7.0 ACRES AND DOMESTIC USE FOR ONE FAMILY

Priority Date: APRIL 7, 1947

Rate: 0.10 CUBIC FOOT PER SECOND, BEING 0.09 CFS FOR IRRIGATION AND 0.01 CFS FOR DOMESTIC

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 and shall be further limited to a diversion of not to exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Period of Use: APRIL 2, TO OCTOBER 31

Source: PALMER CREEK, a tributary of BIG APPLGATE RIVER, tributary of ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
40 S	3 W	WM	7	NE SE

Authorized Place of Use:

DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
40 S	3 W	WM	8	NW SW

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	3 W	WM	8	SW NW	7.0

6. Transfer Application T-11726 proposes to move the authorized point of diversion downstream as shown to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance
40 S	3 W	WM	8	SW NW	POD 1: 42° 06' 20.1" NORTH 123° 05' 18.0 WEST	0.44 mile

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance
40 S	3 W	WM	8	SW NW	POD 2: 42° 06' 25.6" NORTH 123° 05' 15.8 WEST	0.47 mile
40 S	3 W	WM	8	SW NW	POD 3: 2810 FEET NORTH AND 1270 FEET EAST FROM THE SW CORNER OF SECTION 8	0.55 mile

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

Certificate: 43759 in the name of L. E. HASELTINE (perfected under Permit S-25015)
Use: IRRIGATION of 6.2 ACRES and the SUPPLEMENTAL IRRIGATION of 7.0 ACRES
Priority Date: JULY 19, 1957
Rate: 0.17 CUBIC FOOT 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, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: APPLGATE RIVER, a tributary of ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	3 W	WM	8	SW NW	2810 FEET NORTH AND 1270 FEET EAST FROM THE SOUTHWEST CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	3 W	WM	8	SW NW	0.6
40 S	3 W	WM	8	NW SW	5.6

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	3 W	WM	8	SW NW	7.0

8. The applicants' CWRE has better described the authorized place of use as 8.1 acres in the SW NW, being 7.0 acres of supplemental irrigation and 1.1 acres of irrigation, and 5.1 acres of irrigation in the NW SW based on new survey information.

9. Transfer Application T-11726 proposes additional points of diversion approximately 436 feet downstream and approximately 173 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	3 W	WM	8	SW NW	POD 1: 42° 06' 20.1" NORTH 123° 05' 18.0 WEST
40 S	3 W	WM	8	SW NW	POD 2: 42° 06' 25.6" NORTH 123° 05' 15.8 WEST

10. The third right to be transferred is as follows:

Certificate: 57255 in the name of PHYLLIS V. HASELTINE (perfected under Permit S-45893)
Use: SUPPLEMENTAL IRRIGATION of 12.6 ACRES
Priority Date: JULY 27, 1981
Rate: 13.0 ACRE-FEET STORED WATER ONLY
Limit/Duty: This right is limited to a diversion of 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year, provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein, and is subject to the terms and conditions of contract No. 1-07-10-W0291, or a satisfactory replacement, between the Bureau of Reclamation and the applicant, a copy of which is on file in the records of the Water Resources Department.
Source: APPELGATE LAKE RESERVOIR, CONSTRUCTED UNDER PERMIT R-7810 tributary of APPELGATE RIVER

Authorized Point of Diversion:

Twtp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	3 W	WM	8	SW NW	2810 FEET NORTH AND 1270 FEET EAST FROM THE SW CORNER OF SECTION 8. *

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twtp	Rng	Mer	Sec	Q-Q	Acres
40 S	3 W	WM	8	SW NW	7.0
40 S	3 W	WM	8	NW SW	5.6

*Applegate Dam is located in the S1/2 SE1/4, Section 25, T40S, R4W, W.M.

11. The applicants' CWRE has better described the authorized place of use as 7.5 acres in the SW NW, and 5.1 acres in the NW SW based on new survey information.
12. Transfer Application T-11726 proposes additional points of diversion approximately 436 feet downstream and approximately 173 feet upstream to:

Twtp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	3 W	WM	8	SW NW	POD 1: 42° 06' 20.1" NORTH 123° 05' 18.0 WEST
40 S	3 W	WM	8	SW NW	POD 2: 42° 06' 25.6" NORTH 123° 05' 15.8 WEST

13. 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)]

14. 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.
15. A pump, pipeline, and sprinkler system 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-11726.
16. The proposed changes would not result in enlargement of the rights.
17. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

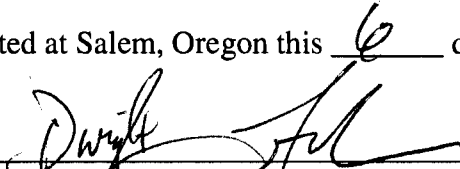
The change in point of diversion and additional points of diversion proposed in Transfer Application T-11726 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-11726 is approved, the final order will include the following:

1. *The change in point of diversion and additional points of diversion proposed in Transfer Application T-11726 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 19687, 43759, and 57255 and any related decree.*
3. *Water Right Certificates 19687, 43759, and 57255 are cancelled.*
4. *The quantity of water diverted at the new points of diversion, together with that diverted at the original 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 totalizing flow meter, 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 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.*
7. *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, 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.*
9. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 6 day of January, 2015.



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

This Preliminary Determination was prepared by Tracy Fox. If you have questions about the information in this document, you may reach me at 503 986-0827 or Tracy.L.Fox@ wrd.state.or.us.

Protests should be addressed to the Water Rights Services Division, Oregon Water Resources Department, 725 Summer Street, Suite A, Salem, OR 97301-1266.