



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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January 9, 2015

VIA E-MAIL (airtron-inc@earthlink.net)

APPLEGATE VALLEY INVESTMENTS LLC
7350 NEW HOPE ROAD
GRANTS PASS, OR 97527

SUBJECT: Water Right Transfer Application T-11757

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11757. 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 Grants Pass Daily Courier 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 Tracy.L.Fox@wr.d.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-11757
Kathy A. Smith, District 14 Watermaster (*via e-mail*)
Patrick Bernard, Agent for the applicant (*via e-mail*)
Gary Wicks, CWRE #194 (*via e-mail*)

enclosures

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11757, Josephine County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF DIVERSION,
)	ADDITIONAL POINTS OF
)	DIVERSION, CHANGE IN PLACE OF
)	USE AND PARTIAL DIMINISHMENT
)	OF A WATER RIGHT

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

APPLEGATE VALLEY INVESTMENTS, LLC
7350 NEW HOPE ROAD
GRANTS PASS, OR 97527

Findings of Fact

1. On March 10, 2014, APPLEGATE VALLEY INVESTMENTS, LLC filed an application for an additional point of diversion (apod) under Certificate 32854; for additional points of diversion and to change the place of use (pou) under Certificates 32858 and 32863; and to change the point of diversion (pod), change the place of use and partially diminish Certificate 61962. The Department assigned the application number T-11757.
2. Notice of the application for transfer was published on March 18, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 24, 2014, the Department contacted the Certified Water Right Examiner (CWRE) by telephone to notify the CWRE and applicant of deficiencies in the application. The deficiencies being that clarification was needed as to what exactly was being transferred where, both on the application and the transfer map. After some discussion and clarification, the CWRE submitted amended application pages and an amended transfer map correcting the deficiencies.

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 29, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11757 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 28, 2014, for the applicant to respond.
5. The applicant requested that the Department proceed with issuance of a Preliminary Determination contingent upon the correction of draft Preliminary Determination where it stated Certificate 32858 was proposed to be diminished. The draft should have read Certificate 61961 is proposed to be diminished. The applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
6. The portion of the first right to be transferred is as follows:

Certificate: 32854 in the name of WILHELMINA T. PERRY (confirmed by Rogue River Decree (F) State Water Board)
Use: IRRIGATION of 7.1 ACRES
Priority Date: 1902
Rate: 0.14 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.14 cubic foot per second.
Source: APPLGATE RIVER, a tributary of ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
37 S	5 W	WM	19	NW NE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	6 W	WM	24	NE NE	3.9
37 S	6 W	WM	24	SE NE	3.2

7. The Rogue River Decree further describes the source of the right as water from the Applegate River through Murphy Ditch.
8. Certificate 32854 does not specify the irrigation season. The irrigation season, as established by the Rogue River Decree, is from April 1 through October 31.
9. Certificate 32854 does not describe the measured distances of the point of diversion, however information is available from the applicant and CWRE further describing the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
37 S	5 W	WM	19	NW NE	3	MURPHY DITCH/POD #1: 733 FEET SOUTH AND 267 FEET EAST FROM THE N1/4 CORNER OF SECTION 19

10. Transfer Application T-11757 proposes additional points of diversion approximately 0.9 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	6 W	WM	24	SW NE	POD #3: 2550 FEET SOUTH AND 1595 FEET WEST FROM THE NE CORNER OF SECTION 24
37 S	6 W	WM	24	SW NE	POD #4: 2040 FEET SOUTH AND 1445 FEET WEST FROM THE NE CORNER OF SECTION 24

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

Certificate: 32858 in the name of MIKKEL AND CECIL GIMMESTAD (confirmed by Rogue River Decree (F) State Water Board)
Use: IRRIGATION of 6.3 ACRES
Priority Date: 1902
Rate: 0.13 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.13 cubic foot per second.
Source: APPLGATE RIVER, a tributary of ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
37 S	5 W	WM	19	NW NE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	6 W	WM	24	SW NE	6.3

12. The Rogue River Decree further describes the source of the right as water from the Applegate River through Murphy Ditch.
13. Certificate 32858 does not specify the irrigation season. The irrigation season, as established by the Rogue River Decree, is from April 1 through October 31.
14. Certificate 32858 does not describe the measured distances of the point of diversion, however information is available from the applicant and CWRE further describing the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
37 S	5 W	WM	19	NW NE	3	MURPHY DITCH/POD #1: 733 FEET SOUTH AND 267 FEET EAST FROM THE N1/4 CORNER OF SECTION 19

15. Transfer Application T-11757 proposes additional points of diversion located approximately 0.9 mile downstream from the authorized point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	6 W	WM	24	SW NE	POD #3: 2550 FEET SOUTH AND 1595 FEET WEST FROM THE NE CORNER OF SECTION 24
37 S	6 W	WM	24	SW NE	POD #4: 2040 FEET SOUTH AND 1445 FEET WEST FROM THE NE CORNER OF SECTION 24

16. Transfer Application T-11757 proposes additional points of diversion and to change the place of use of the right as identified below:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
37 S	6 W	WM	24	SW NE	0.7	POU
37 S	6 W	WM	24	SE NE	4.1	POU
37 S	6 W	WM	24	SW NE	2.2	APOD
37 S	6 W	WM	24	SE NE	4.1	APOD
Total Place of Use Change:					4.8	
Total APOD Change:					6.3	

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

Certificate: 32863 in the name of E. L. RIGHTMIER (confirmed by Rogue River Decree (F) State Water Board)
Use: IRRIGATION of 7.8 ACRES
Priority Date: 1902
Rate: 0.16 CUBIC FOOT PER SECOND
Source: APPLGATE RIVER, a tributary of ROGUE RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q
37 S	5 W	WM	19	NW NE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	6 W	WM	24	SW NE	7.8

18. The Rogue River Decree further describes the source of the right as water from the Applegate River through Murphy Ditch.
19. Certificate 32863 does not specify the irrigation season. The irrigation season, as established by the Rogue River Decree, is from April 1 through October 31.

20. Certificate 32863 does not describe the measured distances of the point of diversion, however information is available from the applicant and CWRE further describing the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
37 S	5 W	WM	19	NW NE	3	MURPHY DITCH/POD #1: 733 FEET SOUTH AND 267 FEET EAST FROM THE N1/4 CORNER OF SECTION 19

21. Permit Amendment Application T-11757 proposes additional points of diversion located approximately 0.9 mile downstream from the authorized point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	6 W	WM	24	SW NE	POD #3: 2550 FEET SOUTH AND 1595 FEET WEST FROM THE NE CORNER OF SECTION 24
37 S	6 W	WM	24	SW NE	POD #4: 2040 FEET SOUTH AND 1445 FEET WEST FROM THE NE CORNER OF SECTION 24

22. Application T-11757 proposes the additional points of diversion and to change the place of use of the right as identified below:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
37 S	6 W	WM	24	SE NE	3.8	POU
37 S	6 W	WM	24	SW NE	4.0	APOD
37 S	6 W	WM	24	SE NE	3.8	APOD
Total Place of Use Change:					3.8	
Total APOD Change:					7.8	

23. The fourth right to be transferred is as follows:

Certificate: 61962 in the name of JOHN T. BRIGGS (perfected under Permit S-45597)
Use: IRRIGATION of 22.0 ACRES
Priority Date: MAY 30, 1980
Rate: 0.28 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: APLEGATE RIVER, tributary of ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	6 W	WM	24	SE NE	2190 FEET SOUTH AND 950 FEET WEST FROM THE NE CORNER OF SECTION 24

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	6 W	WM	24	SE NE	22.0

24. Transfer Application T-11757 proposes to move the point of diversion approximately 0.1 mile and 0.2 mile downstream from the authorized point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	6 W	WM	24	SW NE	POD #3: 2550 FEET SOUTH AND 1595 FEET WEST FROM THE NE CORNER OF SECTION 24
37 S	6 W	WM	24	SW NE	POD #4: 2040 FEET SOUTH AND 1445 FEET WEST FROM THE NE CORNER OF SECTION 24

25. Application T-11757 proposes new points of diversion and to change the place of use of the right as identified below:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
37 S	6 W	WM	24	SW NE	7.6	POU
37 S	6 W	WM	24	SW NE	7.6	POD
37 S	6 W	WM	24	SE NE	14.1	POD
SUPPLEMENTAL IRRIGATION						
37 S	6 W	WM	24	SE NE	0.3	POD
Total Place of Use Change:					7.6	
Total POD Change:					22.0	

26. The Oregon Department of Fish and Wildlife has determined that the diversion is not currently equipped with an appropriate fish screen, but a fish screen may be required in the future at the new points of diversion to prevent fish from entering the diversion.

Partial Diminution of a Water Right

27. A portion of the proposed place of use as described in Transfer Application T-11757 for Certificate 32858 has an existing water right for primary water right appurtenant (Certificate 61962). As part of the transfer application, to avoid enlargement of the water rights, the applicant has requested that the appurtenant portion of Certificate 61962 (0.3 acre) be diminished to Supplemental Irrigation. The portion of the right to be diminished is as follows:

Certificate: 61962 in the name of JOHN T. BRIGGS (perfected under Permit S-45597)
Use: IRRIGATION of 0.3 ACRE
Priority Date: MAY 30, 1980
Rate: 0.0004 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, tributary of ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	6 W	WM	24	SE NE	2190 FEET SOUTH AND 950 FEET WEST FROM THE NE CORNER OF SECTION 24

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acre
37 S	6 W	WM	24	SE NE	0.3

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

- 28. 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 rights are subject to forfeiture under ORS 540.610.
- 29. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right(s) were present within the five-year period prior to submittal of Transfer Application T-11757.
- 30. The proposed changes would not result in enlargement of the rights.
- 31. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The change in point of diversion, additional points of diversion and change in place of use proposed in Transfer Application T-11757 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. The portion of the right requested to be diminished should be diminished to supplemental.

If Transfer Application T-11757 is approved, the final order will include the following:

- 1. *The change in point of diversion, additional points of diversion, change in place of use and partial diminution proposed in Transfer Application T-11757 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 32854, 32858, 32863, 61962 and any related decree.*

3. *The water right for irrigation of 0.3 acre as evidenced by Certificate 61962, described in Finding of Fact No. 27, is diminished from a right for primary irrigation to a right for supplemental irrigation.*
4. *Water Right Certificates 32854, 32858, 32863, and 61962 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.*
5. *The quantity of water diverted at the new and additional points 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.*
6. *The former places of use of the transferred rights shall no longer receive water under the rights.*
7. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a 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 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.*
8. *The Oregon Department of Fish and Wildlife (ODFW) may require the water user to install an approved fish screen at the new point of diversion within one year after receiving written notification that a fish screen is required. Once installed the water user shall maintain and operate the fish screen at the new point of diversion according to 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.*
9. *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.*

10. *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@wr.d.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.