



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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January 16, 2015

WILLIAM W. AND ELIZABETH A. WING
PO BOX 2360
SISTERS, OR 97759

SUBJECT: Water Right Transfer Application T-11879

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11879. 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 Frontier Advertiser 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 503-986-0890 or email Sarah.A.Henderson@ wrd.state.or.us if I may be of assistance.

Sincerely,

Sarah Henderson
Water Rights Transfer Specialist

cc: T-11879
Jeremy T. Giffin, District 11 Watermaster (via e-mail)
John A. Short, Agent for the applicant (via e-mail)
Gary L. De Jarnatt, CWRE # 033 (via e-mail)
Robert Baxter, CWRE # 015 (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-11879, Deschutes County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF
)	APPROPRIATION, PLACE OF USE,
)	CHARACTER OF USE AND A
)	RE-DESCRIPTION OF WATER RIGHT
)	CERTIFICATE 76811 AND A
)	RE-DESCRIPTION OF WATER RIGHT
)	CERTIFICATE 76812

Authority

Oregon Revised Statutes (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicants

WILLIAM W. AND ELIZABETH A. WING
PO BOX 2360
SISTERS, OR 97759

Findings of Fact

1. On August 20, 2014, WILLIAM W. AND ELIZABETH A. WING filed an application to change the point of appropriation, the place of use, and the character of use under Certificate 76811. The Department assigned the application number T-11879.
2. On August 20, 2014, maps more accurately re-describing the place of use for water right Certificates 76811 and 76812 were submitted with the water right transfer application.
3. Notice of the application for transfer was published on September 2, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On October 9, 2014, the Department contacted the applicant's agent by written correspondence to notify them of minor deficiencies in the application map.
5. On October 16, 2014, the applicants submitted a revised map correcting the deficiencies.
6. On December 1, 2014, the applicants requested the completion date be extended to October 1, 2020.

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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7. On December 9, 2014, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11879 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of January 8, 2015, 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.
8. It appears that the place of use depicted in the 2000 final proof survey for water right Certificates 76811 and 76812 and the transfer application map for T-11879 are the same area on the ground. Though the footprint is the same, use of current technology to measure the area results in a different quantification of acreage within 1/4 1/4's. This leads the Department to conclude that the land to which the right has always been appurtenant should be re-described.
9. Aerial photos from 2000-2014 show the irrigated lands as described by the CWRE on the re-description maps submitted for Certificates 76811 and 76812.
10. The following table lists the place of use as described in the existing water right Certificate 76811 and a proposed re-description based on the above findings:

Twp	Rng	Sec	Original Description of Place of Use		Proposed Re-Description of Place of Use	
			Q-Q	Acres	Q-Q	Acres
14 S	11 E	1	SE NE	9.9	SW NE	3.4
14 S	11 E	1	NE SE	30.4	SE NE	25.1
14 S	11 E	1	SW SE	2.4	NE SE	26.9
14 S	11 E	1	SE SE	12.7		
Total:				55.4	Total:	55.4

11. The following table lists the place of use as described in the existing water right Certificate 76812 and a proposed re-description based on the above findings:

Twp	Rng	Sec	Original Description of Place of Use		Proposed Re-Description of Place of Use	
			Q-Q	Acres	Q-Q	Acres
14 S	11 E	1			NW SW	0.3
14 S	11 E	1	NE SW	5.0	NE SW	17.7
14 S	11 E	1	SW SW	22.0	SW SW	21.8
14 S	11 E	1	SE SW	34.0	SE SW	21.3
14 S	11 E	1	NW SE	16.0	NW SE	28.3
14 S	11 E	1	SW SE	36.5	SW SE	32.7
14 S	11 E	1	SE SE	26.0	SE SE	38.9
14 S	11 E	2	SE SE	11.0	SE SE	23.1
14 S	11 E	11	NE NE	23.0	NE NE	11.3
14 S	11 E	12	NE NE	23.5	NE NE	10.6
14 S	11 E	12	NW NE	9.0		
Total:				206.0	Total:	206.0

12. Water right Certificate 76811 and 76812 describe the original point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	11 E	WM	1	NW SE	1240 FEET NORTH AND 1460 FEET WEST FROM THE SE CORNER OF SECTION 1

13. The water right re-description maps for Certificate 76811 and 76812 more accurately describes the point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	11 E	WM	1	NW SE	1820 FEET NORTH AND 1400 FEET WEST FROM THE SE CORNER OF SECTION 1

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

Certificate: 76811 in the name of LHR, LTD (perfected under Permit G-8566)
Use: IRRIGATION of 5.5 ACRES
Priority Date: JULY 31, 1978
Rate: 0.07 CUBIC FOOT PER SECOND. The quantity of water allowed herein together with any other right from this point of appropriation shall not exceed the capacity of this well at the time of perfection of this right (i.e. Certificate 76811, on March 8, 2001).
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 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL in the DESCHUTES BASIN

Authorized Point of Appropriation (as re-described in Finding of Fact above):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	11 E	WM	1	NW SE	1820 FEET NORTH AND 1400 FEET WEST FROM THE SE CORNER OF SECTION 1

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	11 E	WM	1	NE SE	5.5

15. Transfer Application T-11879 proposes to move the authorized point of appropriation approximately 13.7 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	20	SW NW	WING WELL: 1200 FEET NORTH AND 480 FEET EAST FROM THE W1/4 CORNER OF SECTION 20

16. Transfer Application T-11879 also proposes to change the character of use of 1.5 acres of the right to storage.

STORAGE				
Twp	Rng	Mer	Sec	Q-Q
15 S	10 E	WM	20	SW NW

17. Transfer Application T-11879 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	20	SW NW	4.0

Transfer Review Criteria (OAR 690-380-4010)

18. 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.
19. 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-11879.
20. The proposed changes, as conditioned, would not result in enlargement of the right provided the annual volume of water diverted for storage does not exceed 4.5 acre-feet during the irrigation season of each year.
21. The proposed changes would not result in injury to other water rights.
22. All other application requirements are met.

Determination and Proposed Action

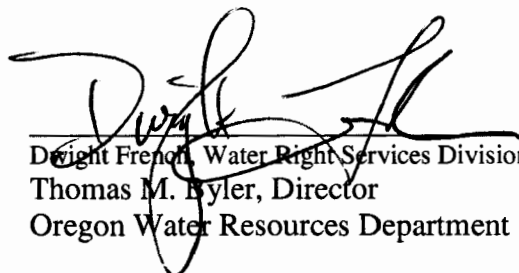
The change in point of appropriation and change in place of use and change in character of use proposed in Transfer Application T-11879 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-11879 is approved, the final order will include the following:

1. *The change in point of appropriation and change in place of use and change in character of use proposed in Transfer Application T-11879 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 76811 and any related decree.*
3. *Water right Certificate 76811 is cancelled. A new certificate will be issued describing that portion of water right Certificate 76811 not affected by this transfer and describing the re-description within the order.*

4. *Water right Certificate 76812 is cancelled. A new certificate will be issued describing the place of use and point of diversion that have been re-described within this order.*
5. *The quantity of water diverted at the new point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
6. *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 appropriation.*
 - 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.*
7. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
8. *The former place of use of the transferred right shall no longer receive water under the right.*
9. *The storage right shall be limited to 4.5 acre-feet per year to avoid enlargement.*
10. *The pond must be lined in order to keep the storage water in the pond for any large amount of time.*
11. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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.*
12. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 16 day of January, 2015.


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

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Sarah Henderson at 503-986-0890 or Sarah.A.Henderson@wr.d.state.or.us.

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