



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
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January 29, 2015

VIA E-MAIL

EAGLE POINT IRRIGATION DISTRICT  
PO BOX 157  
EAGLE POINT, OR 97524

SUBJECT: Water Right Transfer Application T-11838

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11838. 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 Upper Rogue Independent 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@ wrd.state.or.us](mailto: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-11838  
Travis Kelly, District 13 Watermaster (*via e-mail*)  
Freel & Associates LLC, Receiving Landowner  
Clay Jordan, CWRE #431

enclosure

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11838, Jackson County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN PLACE OF USE, AND
	)	CHARACTER OF USE

**Authority**

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

EAGLE POINT IRRIGATION DISTRICT  
PO BOX 157  
EAGLE POINT, OR 97524

**Receiving Landowner**

FREEL & ASSOCIATES LLC  
PO BOX 587  
SHADY COVE OR 97539

**Findings of Fact**

1. On June 12, 2014, EAGLE POINT IRRIGATION DISTRICT filed an application to change the place of use and to change the character of use under Certificate 75429. The Department assigned the application number T-11838. Certificate 75429 has subsequently been superseded by Certificate 89373.
2. FREEL & ASSOCIATES LLC, the landowner, together with EAGLE POINT IRRIGATION DISTRICT will be responsible for completion of the changes.
3. Notice of the application for transfer was published on June 24, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On January 8, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11838 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 9, 2015, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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 right to be transferred is as follows:

**Certificate:** 89373 in the name of EAGLE POINT IRRIGATION DISTRICT  
(perfected under Permit S-6396)  
**Use:** IRRIGATION OF 6.5 ACRES  
**Priority Date:** AUGUST 21, 1915  
**Rate:** 0.08 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, is limited to a diversion of ONE-EIGHTIETH 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 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** BIG BUTTE CREEK, tributary to ROGUE RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
35 S	2 E	WM	3	NW NW	4	1030 FEET SOUTH AND 290 FEET EAST FROM THE NW CORNER OF SECTION 3
35 S	2 E	WM	10	NE NE		1130 FEET SOUTH AND 700 FEET WEST FROM THE NE CORNER OF SECTION 10

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	1 W	WM	11	NE NW	5.5
35 S	1 W	WM	11	NW NW	1.0

6. Certificate 89373 does not describe the irrigation season, however per the Rogue River Decree, the irrigation season is April 1 through October 31.
7. Transfer Application T-11838 proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q
35 S	1 W	WM	2	NW SW
35 S	1 W	WM	2	SW SW
35 S	1 W	WM	3	SE SW
35 S	1 W	WM	3	NE SE
35 S	1 W	WM	3	NW SE
35 S	1 W	WM	3	SW SE
35 S	1 W	WM	3	SE SE
35 S	1 W	WM	10	NE NW

8. Transfer Application T-11838 proposes to change the character of use to industrial.

***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 were present within the five-year period prior to submittal of Transfer Application T-11838.
11. The proposed changes would not result in enlargement of the right.
12. The proposed changes would not result in injury to other water rights.

**Determination and Proposed Action**

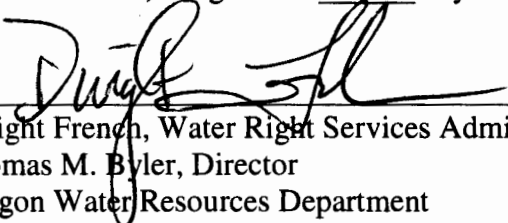
The change in place of use and change in character of use proposed in Transfer Application T-11838 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-11838 is approved, the final order will include the following:*

1. *The change in place of use and change in character of use proposed in Transfer Application T-11838 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 89373 and any related decree.*
3. *The amount of water used for the proposed industrial use shall be limited to 0.08 cubic foot per second during the irrigation season of April 1 through October 31, of each year.*
4. *Water right Certificate 89373 is modified. The Department will issue a superseding certificate describing the rights when it determines that is necessary for record keeping.*
5. *The former place of use of the transferred right shall no longer receive water under the right.*
6. *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.*

7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued. The new certificate will be issued to EAGLE POINT IRRIGATION DISTRICT.*

Dated at Salem, Oregon this 29 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@wrds.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.