



Oregon
Kate Brown, Governor

Water Resources Department
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February 27, 2015

VIA E-MAIL

JOHN M. JAMES AND VANESSA J. JAMES
PO BOX 510
MERLIN, OR 97532

SUBJECT: Water Right Transfer Application T-11802

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11802. 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 last day of publication in the newspaper.

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@wrд.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-11802
Kathy A. Smith, District 14 Watermaster (*via e-mail*)
Kenna Clay Jordan, CWRE #431 (*via e-mail*)
enclosures

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11802, Josephine 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.

Applicants

BLACK BAR LODGE, INC.
(JOHN M. AND VANESSA J. JAMES)
PO BOX 510
MERLIN, OR 97532

Findings of Fact

1. On April 29, 2014, BLACK BAR LODGE INC. (JOHN M. AND VANESSA J. JAMES) filed an application to change the place of use and to change the character of use under Certificate 32303. The Department assigned the application number T-11802.
2. Notice of the application for transfer was published on May 6, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 7, 2014, the Department contacted the applicant, John James, by voice and email requesting the first page of the Land Use Form, which was missing from the application. On November 10, 2014, the applicant submitted the missing page, resolving the deficiency.
4. On November 12, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11802 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of December 12, 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 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 right to be transferred is as follows:

Certificate: 32303 in the name of WILLIAM E. HULL (perfected under Permit S-26498)
Use: DOMESTIC USE IN LODGE AND THREE CABINS
Priority Date: DECEMBER 7, 1959
Rate: 0.01 CUBIC FOOT PER SECOND
Source: UNNAMED STREAM, a tributary of ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot
33 S	9 W	WM	35	SE SW	7

Authorized Place of Use:

DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	GLot
33 S	9 W	WM	35	NE SW	6

6. Certificate 32303 does not describe the measured distances of the point of diversion, however information is available from the Certified Water Right Examiner (CWRE) indicating that the point of diversion is more accurately described as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
33 S	9 W	WM	35	SE SW	7	970 FEET SOUTH AND 75 FEET EAST FROM THE SW CORNER OF THE ST CHARLES PLACER CLAIM

7. Application T-11802 proposes to change the place of use of the right to:

QUASI-MUNICIPAL USE					
Twp	Rng	Mer	Sec	Q-Q	GLot
33 S	9 W	WM	35	SE NW	3
33 S	9 W	WM	35	NE SW	6
33 S	9 W	WM	35	SE SW	7

8. Transfer Application T-11802 also proposes to change the character of use to QUASI-MUNICIPAL.

9. Certificate 32303 does not state an annual duty for domestic use, however, ORS 540.610 states "beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state". It is unlikely that the quantity of water, if diverted continuously at a rate of 0.01 cfs for 365 days of the year (0.01 cfs x 60 sec/min x 60 min/hr x 24 hr/day x 365 days/year ÷ 43,560 square feet per acre = 7.24 acre-feet per year), could have been beneficially used for domestic use.

10. Use of more water per year than could maximally have been beneficially used for the original domestic use would constitute enlargement of the right, which is not allowable. Therefore, to avoid enlarging the right in the conversion to quasi-municipal use, an annual volume limit should be added to the right, based on the best available estimate of the

maximum amount of water that could have been beneficially diverted and used for domestic use during the year.

11. The Department estimates the average household use, including ½ acre lawn and garden, to be 1.0 acre-foot per year. Since Certificate 32303 is for a lodge and three cabins, the annual volume limitation to be placed on this right is 4.0 acre-feet per year.

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

12. 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.
13. 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-11802.
14. The proposed changes, as conditioned, would not result in enlargement of the right.
15. The proposed changes, as conditioned, 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-11802 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-11802 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-11802 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 32303 and any related decree.*
3. *Water right Certificate 32303 is cancelled.*
4. *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 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.

5. *The use of water under this right is limited to an annual volume of 4.0 acre-feet per year.*
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.*

Dated at Salem, Oregon this 27 day of February, 2015.



Dwight French, Water Right Services Administrator, for
Thomas M. Hyler, 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.