



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

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March 4, 2015

VIA E-MAIL

MARTIN FARMS PROPERTIES LLC
PO BOX 3187
CENTRAL POINT, OR 97502

SUBJECT: Water Right Transfer Application T-11881

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11881. 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 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 Sarah.A.Henderson@wrdd.state.or.us if I may be of assistance.

Sincerely,

Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-11881
Travis Kelly, District 13 Watermaster (*via e-mail*)
Mike Montero, Agent for the applicant (*via e-mail*)
James Hibbs, CWRE #066 (*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-11881, Jackson County)	PROPOSING APPROVAL OF
)	CHANGES IN POINT OF DIVERSION
)	AND CHARACTER OF USE

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

MARTIN FARMS PROPERTIES LLC
PO BOX 3187
CENTRAL POINT, OR 97502

Findings of Fact

1. On August 18, 2014, MARTIN FARMS PROPERTIES, LLC filed an application to change the character of use under Certificates 15308 and 15239 and change the points of diversion under Certificates 15238 and 15239. The Department assigned the application number T-11881.
2. 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.
3. On January 16, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11881 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 15, 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.
4. The first right to be transferred is as follows:

Certificate:	15238 in the name of ROY V. MARTIN (perfected under Permit R-846)
Use:	STORAGE
Priority Date:	JUNE 24, 1946
Rate:	0.6 ACRE-FEET
Limit/Duty:	The amount of water entitled to be stored each year under such right, for the purposes aforesaid, shall not exceed 0.6 acre-feet.

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.

Source: OLD MINING TUNNEL in GRIFFIN CREEK WATERSHED, a tributary of BEAR CREEK

Reservoir Location:

Twp	Rng	Mer	Sec	Q-Q
37 S	2 W	WM	33	SW SW

5. Certificate 15238 does not describe a location for the point of diversion, however information is available from the applicant and the agent, indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
37 S	2 W	WM	33	SW SW	95	1203 FEET NORTH AND 868 FEET EAST FROM THE SW CORNER OF SECTION 33

6. Transfer Application T-11881 proposes to move the authorized point of diversion approximately 0.2 mile to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
37 S	2 W	WM	33	SW SW	95	80 FEET NORTH AND 471 FEET EAST FROM THE SW CORNER OF SECTION 33

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

Certificate: 15239 in the name of ROY V. MARTIN (perfected under Permit S-17066)

Use: SUPPLEMENTAL IRRIGATION of 8.0 ACRES

Priority Date: JUNE 24, 1946

Rate: 0.10 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, irrigated from direct flow 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 from direct flow and storage from reservoir to be constructed under Permit No. R-846.

Period of Use: APRIL 2 to OCTOBER 31

Source: OLD MINING TUNNEL AND MARTIN RESERVOIR to be constructed under Permit No. R-846, tributary of GRIFFIN CREEK WATERSHED

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
37 S	2 W	WM	33	SW SW

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	2 W	WM	33	SW SW	8.0

8. Certificate 15239 does not describe the measured distance for the point of diversion, however information is available from the applicant and the agent, indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
37 S	2 W	WM	33	SW SW	95	1203 FEET NORTH AND 868 FEET EAST FROM THE SW CORNER OF SECTION 33

9. Transfer Application T-11881 proposes to move the authorized point of diversion approximately 0.2 mile to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
37 S	2 W	WM	33	SW SW	95	80 FEET NORTH AND 471 FEET EAST FROM THE SW CORNER OF SECTION 33

10. Transfer Application T-11881 proposes to change the character of use to supplemental irrigation and agriculture, including but not limited to supplemental irrigation and agriculture, dust and frost control and fire suppression.

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

Certificate: 15308 in the name of ROY V. MARTIN (perfected under Permit S-15772)

Use: IRRIGATION of 8.0 ACRES

Priority Date: MAY 11, 1944

Rate: 0.10 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 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: A MINING TUNNEL (in Griffin Creek Watershed), tributary of BEAR CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
37 S	2 W	WM	33	SW SW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	2 W	WM	33	SW SW	8.0

12. Certificate 15308 does not describe the measured distance for the point of diversion, however information is available from the applicant and the agent, indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
37 S	2 W	WM	33	SW SW	95	1100 FEET NORTH AND 64 FEET EAST FROM THE SW CORNER OF SECTION 33

13. Transfer Application T-11881 proposes to change the character of use to irrigation and agriculture, including but not limited to irrigation and agriculture, dust and frost control and fire suppression.
14. 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 point of diversion to prevent fish from entering the diversion.

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

15. 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.
16. A diversion structure and ditch 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-11881.
17. The proposed changes would not result in enlargement of the rights.
18. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The change in points of diversion and change in character of use proposed in Transfer Application T-11881 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-11881 is approved, the final order will include the following:

1. *The change in points of diversion and change in character of use proposed in Transfer Application T-11881 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 15238, 15239 and 15308 and any related decree.*
3. *Water right Certificates 15238, 15239 and 15308 are cancelled.*
4. *The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original point 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. *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.*
7. *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.*
8. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 4 day of March, 2015.


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

This Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-986-0890 or Sarah.A.Henderson@wrdd.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.