



Oregon

Kate Brown, Governor

Water Resources Department

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March 9, 2015

VIA E-MAIL

SAMUEL E. AND SARA J. TUCKER
DANIEL D. TUCKER
105 N. MAIN
MILTON-FREEWATER, OR 97862

SUBJECT: Water Right Transfer Application T-11859

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11859. 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 Pendleton Record, 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 503-986-0886 or Patrick.K.Starnes@ wrd.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application file T-11859
Greg Silbernagel, District 5 Watermaster (*via e-mail*)
Dale Van Schoiack, CWRE #333 (*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-11859, Umatilla County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF DIVERSION
)	AND VOLUNTARY CANCELLATION
)	OF TWO WATER RIGHTS

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicants

SAMUEL E. AND SARA J. TUCKER
DANIEL D. TUCKER
105 N. MAIN
MILTON-FREEWATER, OR 97862

Findings of Fact

1. On July 11, 2014, Samuel and Sara Tucker, and Daniel Tucker filed an application to change the point of diversion under Certificates 1711 and 1724. The Department assigned the application number T-11859.
2. Prior to Transfer Application T-11859 being submitted, Certificate 1711 was cancelled as a result of a partial cancellation, evidenced by Special Order Volume 93, Page 132. Certificate 1711 was superseded by Certificate 89419.
3. Notice of the application for transfer was published on July 15, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice. The Oregon Department of Fish and Wildlife did request inclusion of a condition for requiring the possible installation of fish screening at some future date. 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.
4. On January 29, 2015, the Department received a new revised map from the applicant to clarify the existing points of diversion.

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.

5. On January 29, 2015, the applicants submitted voluntary cancellation affidavits to cancel the domestic portions for each of the water rights involved in transfer.

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

Certificate: 89419 in the name of JOHN DAVIDSON (confirmed by decree of the Circuit Court of the State of Oregon for Umatilla County)
Use: IRRIGATION of 36.48 ACRES AND LIVESTOCK
Priority Date: 1892
Rate/Limit: The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 0.458 cfs
Source: JOHNSON CREEK, tributary to PINE CREEK

Authorized Place of Use:

IRRIGATION AND LIVESTOCK						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
6 N	35 E	WM	30	SE NE	200	19.70
6 N	35 E	WM	30	SE NE	201	16.78
Total						36.48

7. Certificate 89419 does not describe the location of the point of diversion for this water use. However, information is available from the Pine Creek tabulation and map of the Umatilla River basin adjudication indicating that the original point of diversion on Johnson Creek is described as the Davidson Ditch. Information is also available from the current map prepared by the applicant's Certified Water Rights Examiner based on a recent field visit and subsequent survey indicating that the original point of diversion (*POD #1 on map*) is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	29	SE NW	160 FEET WEST FROM THE CENTER OF SECTION 29

8. Transfer Application T-11859 proposes to change the point of diversion downstream approximately 3500 feet to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	29	SW NW	1310 FEET NORTH AND 10 FEET EAST FROM THE E¼ CORNER OF SECTION 30

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

Certificate: 1724 in the name of C. W. RECORDS (confirmed by decree of the Circuit Court of the State of Oregon for Umatilla County, entered of record at Salem, in the Order Record of the State Water Board of the State of Oregon, in Volume 3, page 324)
Use: IRRIGATION of 34.8 ACRES AND STOCK USE
Priority Date: 1892

Rate/Limit: The amount of water to which such right is entitled and hereby confirmed for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed a rate of flow of 0.437 CUBIC FOOT PER SECOND or its equivalent in case of rotation.

Source: JOHNSON CREEK, tributary to PINE CREEK

Authorized Place of Use:

IRRIGATION AND LIVESTOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	29	SW NW	34.8

10. Certificate 1724 does not describe the location of the point of diversion for this water use. However, information is available from the Pine Creek map of the Umatilla River basin adjudication, and information is also available from the current map prepared by the applicant's Certified Water Rights Examiner based on a recent field visit and subsequent survey indicating that the original point of diversion (*POD #2 on map*) is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	29	SW NW	660 FEET NORTH AND 1310 FEET EAST FROM THE E ¹ / ₄ CORNER OF SECTION 30

11. Transfer Application T-11859 proposes to change the point of diversion downstream approximately 1900 feet to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	29	SW NW	1310 FEET NORTH AND 10 FEET EAST FROM THE E ¹ / ₄ CORNER OF SECTION 30

12. On February 13, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11859 to the applicant. The draft Preliminary Determination set forth a deadline of March 16, 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.

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

13. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
14. 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-11859.
15. The proposed change would not result in enlargement of the rights.
16. The proposed change would not result in injury to other water rights.

Partial Cancellation of certain Water Rights

17. On January 29, 2015, the applicants submitted two affidavits meeting the requirements of ORS 540.621 for partial cancellation of two water rights. The partial cancellation is for the DOMESTIC portion only under Certificates 89419 and 1724, and does not include an amount of water associated with them. The domestic portions are located as follows:

Certificate: 89419 in the name of JOHN DAVIDSON (confirmed by decree of the Circuit Court of the State of Oregon for Umatilla County)

Use: DOMESTIC

Priority Date: 1892

Source: JOHNSON CREEK, tributary to PINE CREEK

Authorized Place of Use to be Cancelled:

DOMESTIC					
Twp	Rng	Mer	Sec	Q - Q	Acres
6 N	35 E	WM	30	SE NE	36.48

Certificate: 1724 in the name of C. W. RECORDS (confirmed by decree of the Circuit Court of the State of Oregon for Umatilla County)

Use: DOMESTIC

Priority Date: 1892

Source: JOHNSON CREEK, tributary to PINE CREEK

Authorized Place of Use to be Cancelled:

DOMESTIC					
Twp	Rng	Mer	Sec	Q - Q	Acres
6 N	35 E	WM	29	SW NW	34.8

Determination and Proposed Action

The change in points of diversion proposed in Transfer Application T-11859 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. The abandoned domestic portions of water right Certificates 89419 and 1724 should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned water right portions will be cancelled.

If Transfer Application T-11859 is approved, the final order will include the following:

1. *The changes in points of diversion proposed in Transfer Application T-11859 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 89419 and 1724 and any related decree.*
3. *Water right Certificates 89419 and 1724 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
4. *The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original points 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 (new and existing) 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.*
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 10 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 Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@wrdd.state.or.us

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