



Oregon

Kate Brown, Governor

Water Resources Department

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March 10, 2015

VIA E-MAIL

ALLEN MAXFIELD
329 ISLAND AVENUE
NEWPORT BEACH, CA 92661

SUBJECT: Water Right Transfer Application T-11919

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11919. 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 Klamath Falls Herald and News 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 Lanaya.F.Blakely@ wrd.state.or.us or (503) 986-0888, if I may be of assistance.

Sincerely,

Lanaya Blakely
Transfer Specialist
Transfer and Conservation Section



cc: Transfer Application file T-11919
Scott White, District 17 Watermaster (*via e-mail*)
Adkins Consulting Engineering, LLP, Agent for the applicant (*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-11919, Klamath County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF DIVERSION
)	
)	

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

ALLEN MAXFIELD
329 ISLAND AVENUE
NEWPORT BEACH, CA 92661

Findings of Fact

1. On November 5, 2014, ALLEN MAXFIELD filed an application to change the point of diversion under Certificate 65750. The Department assigned the application number T-11919.
2. Notice of the application for transfer was published on November 11, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 5, 2014, Transfer Application T-11917, T-11918, and T-11920 were filed. This transfer modifies the same right proposed in T-11917, T-11918, and T-11920. Certificate 65750 shall be canceled after all four applications are processed.
4. On January 20, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11919 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of February 19, 2015, for the applicants to respond.

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 applicant provided ownership information for the area affected by T-11919. The Department determined that consent to transfer was required, from an additional landowner, before a preliminary determination could be issued. The deficiency letter set forth a deadline of April 13, 2015, for the applicant to respond.
6. On February 17, 2015, the applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer, and requested that the Department proceed with issuance of a Preliminary Determination.
7. The portion of the right to be transferred is as follows:

Certificate: 65750 in the name of PETER M. BOURDET (perfected under Permit S-23654)

Use: IRRIGATING 4.5 ACRES

Priority Date: JUNE 30, 1955

Rate: 0.11 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-FORTIETH of one cubic foot per second (or its equivalent) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

Source: WILLIAMSON RIVER, tributary to the UPPER KLAMATH LAKE

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
34 S	7 E	WM	22	SE NW	4	3930 FEET NORTH AND 2120 FEET EAST FROM THE NW CORNER OF SECTION 27

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
34 S	7 E	WM	22	SW SE	8	4.3
34 S	7 E	WM	22	SE SE		0.2

8. Transfer Application T-11919 proposes to move the authorized point of diversion approximately 0.77 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
34 S	7 E	WM	22	SW SE	8	2380 FEET SOUTH AND 740 FEET EAST FROM THE CENTER ¼ CORNER OF SECTION 22

9. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

10. 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.
11. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11919.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in point of diversion proposed in Transfer Application T-11919 appears 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-11919 is approved, the final order will include the following:


1. *The change in point of diversion proposed in Transfer Application T-11919 is 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 65750 and any related decree.*
3. *Water right certificate 65750 is modified and will be canceled upon approval or denial of T-11917, T-11918, and T-11920. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the new point of diversion, together with that diverted at the original point 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 new point of diversion.*
 - 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.*

6. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

The water user shall operate and maintain the fish screen at the new point of diversion consistent with 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 change and full beneficial use of the water.*
8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right 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

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

This Preliminary Determination was prepared by Lanaya Blakely. If you have question about the information in this document, you may reach me at (503) 986-0888 or Lanaya.F.Blakely@wrds.state.or.us.