



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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March 20, 2015

SHIRLEY STONE, TRUSTEE
5500 LOST CREEK RD
EAGLE POINT, OR 97524

SUBJECT: Water Right Transfer Application T-11893

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11893. 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 Lanaya.F.Blakely@wr.d.state.or.us or (503) 986-0888, if I may be of assistance.

Sincerely,

Lanaya Blakely
Transfer Specialist
Transfer and Conservation Section

cc: T-11893
Travis Kelly, District 13 Watermaster (via e-mail)
Gary D. Kaiser, 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-11893, Jackson County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF DIVERSION
)	
)	

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

SHIRLEY STONE, TRUSTEE
5500 LOST CREEK RD
EAGLE POINT, OR 97524

Findings of Fact

1. On September 24, 2014, SHIRLEY STONE, TRUSTEE filed an application to change the point of diversion under Certificate 20285. The Department assigned the application number T-11893.
2. Notice of the application for transfer was published on September 30, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 24, 2014, the Department sent a letter to the applicant requesting clarification of the intended changes for the place of use, Table 2.
4. On December 3, 2014, the Department received a letter verifying the place of use affected by the proposed POD change.
5. On December 16, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11893 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 16, 2015, for the applicant to respond. The applicant requested that the date to make complete beneficial use of the water be extended to October 1, 2018, and for the Department to proceed with issuance of a Preliminary Determination. The applicant 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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6. The right to be transferred is as follows:

Certificate: 20285 in the name of JOHN WALCH (perfected under Permit S-19724)
Use: IRRIGATION of 116 ACRES
Priority Date: JULY 25, 1950
Rate: 2.9 CUBIC FEET 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-FORTIETH 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 from April 2, to October 31, of each year.
Source: LOST CREEK, tributary to SOUTH FORK LITTLE BUTTE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
37 S	2 E	WM	21	NE SE

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	2 E	WM	3	SW SW	35.5
37 S	2 E	WM	9	NE NE	10.1
37 S	2 E	WM	9	SE NE	6.9
37 S	2 E	WM	10	NW NW	39.6
37 S	2 E	WM	10	SW NW	23.9

7. Transfer Application T-11893 proposes to move the authorized point of diversion approximately 2.7 miles to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	2 E	WM	4	SE SE	815 FEET NORTH AND 145 FEET WEST FROM THE SE CORNER OF SECTION 4

8. 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)]

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-11893.
11. The proposed change would not result in enlargement of the right.

12. 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-11893 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-11893 is approved, the final order will include the following:

1. *The change in point of diversion proposed in Transfer Application T-11893 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 20285 and any related decree.*
3. *Water right certificate 20285 is cancelled.*
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(s) 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, 2018**. 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 20 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@wrđ.state.or.us.