



# Oregon

Kate Brown, Governor

**Water Resources Department**  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
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March 20, 2015

**Applicant**

WANDA L. POWELL  
PO BOX 176  
O'BRIEN, OR 97534

**Receiving Landowner**

ROBERT A. POWELL  
PO BOX 176  
O'BRIEN, OR 97534

SUBJECT: Water Right Transfer Application T-11628

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11628. 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 Grants Pass Daily Courier 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@ wrd.state.or.us](mailto:Sarah.A.Henderson@ wrd.state.or.us) if I may be of assistance.

Sincerely,

Transfer Specialist  
Transfer and Conservation Section

cc: T-11628  
Kathy A. Smith, District 14 Watermaster (via e-mail)  
Gordon Lyford, CWRE #341 (via e-mail)

encs

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11628, Josephine County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF DIVERSION
	)	AND PLACE OF USE, AND
	)	CHARACTER OF USE

**Authority**

Oregon Revised Statutes (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 Rules (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

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**Findings of Fact**

1. On June 28, 2013, WANDA L. POWELL filed an application to change the point of diversion and place of use and to change the character of use under Certificate 20977. The Department assigned the application number T-11628.
2. Notice of the application for transfer was published on July 2, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 17, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11628 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 20, 2015, for the applicant to respond.
4. On February 18, 2015, the applicant's agent contacted the Department with questions regarding the draft Preliminary Determination. On March 2, 2015, the Department mailed a revised draft Preliminary Determination and March 3, 2015, a second revised draft Preliminary Determination was sent.
5. On March 5, 2015, 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.

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.

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

**Certificate:** 20977 in the name of DAVID E. WILSON (perfected under Permit S-17966)  
**Use:** IRRIGATION  
**Priority Date:** SEPTEMBER 23, 1947  
**Rate:** 0.008 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-FIFTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated throughout the irrigation season from April 1st to November 1st of each year, and shall be still further limited to a diversion of not to exceed 0.008 c.f.s.  
**Period of Use:** April 1<sup>st</sup> through November 1<sup>st</sup>  
**Source:** LITTLE ROCK CREEK, a tributary of WEST FORK OF ILLINOIS RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
40 S	9 W	WM	27	SE NE

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	9 W	WM	26	NW SW	0.4

7. Certificate 20977 does not describe the measured distances of the point of diversion, however information is available from the applicant and Certified Water Right Examiner indicating that the point of diversion is as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	9 W	WM	27	NE SE	230 FEET SOUTH AND 420 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 27

8. Transfer Application T-11628 proposes to move the authorized point of diversion approximately 425 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	9 W	WM	27	NE SE	380 FEET SOUTH AND 50 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 27

9. Transfer Application T-11628 proposes to change the character of use on 0.4 acre from irrigation to domestic use.

10. Transfer Application T-11628 also proposes to change the place of use of the 0.4 acre to within:

DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
40 S	9 W	WM	26	NW SW

11. Certificate 20977 does not list the duty of water for irrigation. Permits issued subsequent to Permit S-17966 generally allowed 3.5 acre feet per acre per year for irrigation.
12. 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)]***

13. 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.
14. A pump, pipeline, and sprinkler system 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-11628.
15. The proposed changes, as conditioned, would not result in enlargement of the right.
16. The proposed changes, as conditioned, would not result in injury to other water rights.

**Determination and Proposed Action**

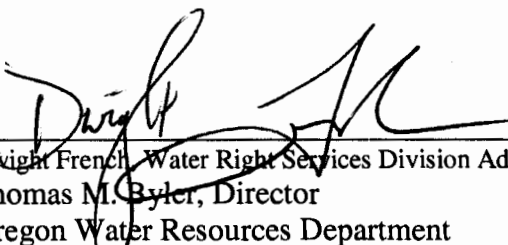
The change in point of diversion, change in place of use and change in character of use proposed in Transfer Application T-11628 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-11628 is approved, the final order will include the following:*

1. *The change in point of diversion and change in place of use and change in character of use proposed in Transfer Application T-11628 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 20977 and any related decree.*
3. *The amount of water diverted for domestic use shall be limited to a rate of diversion of 0.008 cfs (0.4 acre x 1/50 cfs/ac) and shall be further limited to a total volume diverted of 1.40 af (0.4ac x 3.5 af/ac) during the irrigation season, April 1 to November 1 of each year.*
4. *Water right Certificate 20977 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
5. *The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*

6. *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.*
7. *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 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.*
8. *The former place of use of the transferred right shall no longer receive water under the right.*
9. *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.*
10. *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 Division 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@wrds.state.or.us](mailto:Sarah.A.Henderson@wrds.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.*