



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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March 23, 2015

VIA E-MAIL

ELIZABETH B. BUTLER
PO BOX 322
WILLIAMS, OR 97544

SUBJECT: Water Right Transfer Application T-11861

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11861. 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.

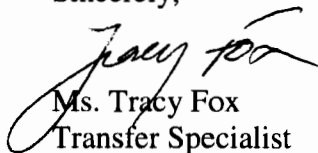
A public notice is being published in the Department's weekly publication and in the Grants Pass Daily Courier newspaper, with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the Department's notice.

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 Tracy.L.Fox@ wrd.state.or.us or 503 986-0827 if I may be of assistance.

Sincerely,



Ms. Tracy Fox
Transfer Specialist
Transfer and Conservation Section

cc: T-11861
Kathy A. Smith, District 14 Watermaster (via e-mail)
Gordon Lyford, CWRE #341 (via e-mail)

enclosures

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11861, Josephine County)	PROPOSING APPROVAL OF
)	CHANGES IN CHARACTER OF USE
)	AND PARTIAL CANCELLATION OF
)	WATER RIGHTS

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.

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.

Applicant

ELIZABETH B. BUTLER
PO BOX 322
WILLIAMS, OR 97544

Findings of Fact

1. On July 14, 2014, ELIZABETH BUTLER filed an application to change the character of use under Certificates 20338 and 20339 and submitted Affidavits to partially cancel Certificates 4796, 20339, and 83362. The Department assigned the application number T-11861.
2. Notice of the application for transfer was published on July 22, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 13, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11861 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 13, 2015, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination, with a few minor corrections, 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.
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4. The first right to be transferred is as follows:

Certificate: 20338 in the name of C. E. WHITTIER (perfected under Permit R-1427)
Use: STORAGE, TO BE APPROPRIATED UNDER APPLICATION S-27603, PERMIT S-21745 FOR SUPPLEMENTAL IRRIGATION
Priority Date: SEPTEMBER 2, 1952
Limit/Duty: The amount of water entitled to be stored each year under such right, for the purposes aforesaid, shall not exceed 6.75 acre-feet.
Source: PANTHER GULCH, tributary of EAST FORK WILLIAMS CREEK

Location of the Reservoir:

Twp	Rng	Mer	Sec	Q-Q
39 S	5 W	WM	2	SW SW

5. Certificate 20338 does not describe the location of the point of diversion, however information is available in the Department's records for Application R-27602, Permit R-1427 (Certificate 20338), for Application S-27603, Permit S-21745 (Certificate 20339) and from the Certified Water Rights Examiner (CWRE) indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	5 W	WM	2	SW SW	100 FEET NORTH AND 50 FEET WEST FROM THE SE CORNER OF THE SW SW OF SECTION 2

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

Certificate: 20339 in the name of C. E. WHITTIER (perfected under Permit S-21745)
Use: SUPPLEMENTAL IRRIGATION of 5.5 ACRES
Priority Date: SEPTEMBER 2, 1952
Rate: 0.07 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, from direct flow and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from reservoir constructed under Permit No. R-1427; provided further that the amount of water allowed herein, together with the amount secured under any other right existing for the same lands shall not exceed the limitation allowed herein.
Source: WHITTIER RESERVOIR, a tributary of EAST FORK WILLIAMS CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
39 S	5 W	WM	2	SW SW

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	5 W	WM	2	SW SW	5.5

7. Certificate 20339 does not describe the measured distances of the point of diversion, however information is available from Department records for Application S-27603, Permit S-21745 (Certificate 20339), and the CWRE indicating that the point of diversion is further described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	5 W	WM	2	SW SW	300 FEET NORTH AND 400 FEET WEST FROM THE SE CORNER OF THE SW SW OF SECTION 2

8. Transfer Application T-11861 proposes to change the character of use of Certificate 20338 to multi-purpose.
9. Transfer Application T-11861 proposes to change the character of use of Certificate 20339 from supplemental irrigation to primary irrigation for the following:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	5 W	WM	2	SW SW	5.5

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 rights. There is no information in the record that would demonstrate that the rights are 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 rights were present within the five-year period prior to submittal of Transfer Application T-11861.
12. The proposed changes would not result in enlargement of the rights.
13. The proposed changes would not result in injury to other water rights.

Partial Cancellation of a Water Right

14. On July 14, 2014, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Elizabeth Butler. The right to be cancelled is as follows:

Certificate: 4796 in the name of OSCAR SULLIVAN (perfected under Permit S-3900)
Use: SUPPLEMENTAL IRRIGATION of 5.0 ACRES
Priority Date: AUGUST 19, 1918
Rate: 0.07 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, or its equivalent in case of rotation.

Source: WASTE WATER FROM EAST FORK OF WILLIAMS CREEK, tributary to WILLIAMS CREEK

Authorized Place of Use to be Cancelled:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	5 W	WM	2	SW SW	5.00

15. On July 14, 2014, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Elizabeth Butler. The right to be cancelled is as follows:

Certificate: 20339 in the name of C. E. WHITTIER (perfected under Permit S-21745)

Use: SUPPLEMENTAL IRRIGATION of 5.82 ACRES

Priority Date: SEPTEMBER 2, 1952

Rate: 0.07 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 a ONE-EIGHTIETH of one cubic foot per second per acre, from direct flow and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from reservoir constructed under Permit No. R-1427; provided further that the amount of water allowed herein, together with the amount secured under any other right existing for the same lands shall not exceed the limitation allowed herein.

Source: WHITTIER RESERVOIR, tributary of EAST FORK WILLIAMS CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
39 S	5 W	WM	2	SW SW

Authorized Place of Use to be Cancelled:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	5 W	WM	2	SW SW	5.82

16. On July 14, 2014, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Elizabeth Butler. The right to be cancelled is as follows:

Certificate: 83362 in the name of C. E. WHITTIER AND LOY YOKUM (perfected under Permit S-2667)

Use: DOMESTIC USE AND IRRIGATION of 11.32 ACRES

Priority Date: SEPTEMBER 10, 1915

Rate: 0.15 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-EIGHTIETH of one cubic foot per second, 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.

Source: EAST FORK WILLIAMS CREEK, tributary to WILLIAMS CREEK

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Tract # / Ditch Name	Measured Distances
39 S	5 W	WM	3	SE SE	TRACT 2	500 FEET NORTH AND 400 FEET WEST FROM THE SE CORNER OF SECTION 3
39 S	5 W	WM	14	SE NW	TRACT 1/ EAST SIDE DITCH	2250 FEET SOUTH AND 1900 FEET EAST FROM THE NW CORNER OF SECTION 14

Authorized Place of Use to be Cancelled:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tract #	Acres
39 S	5 W	WM	2	SW SW	2	11.32

Determination and Proposed Action

The changes in character of use proposed in Transfer Application T-11861 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned rights should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the abandoned rights will be cancelled.

If Transfer Application T-11861 is approved, the final order will include the following:

1. *The changes in character of use proposed in Transfer Application T-11861 are approved. The portions of the rights that have been abandoned are cancelled.*
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 20338 and 20339, and any related decree.*
3. *Water right Certificates 4796, 20338, 20339, and 83362 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer and cancellations.*
4. *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.*
 - 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 are located within a private structure, the Watermaster shall request access upon reasonable notice.*
5. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2019**. 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.*
6. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 23 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 Tracy Fox. If you have questions about the information in this document, you may reach me at 503 986-0827 or Tracy.L.Fox@wrds.state.or.us.

Protests should be addressed to the Water Rights Services Division, Oregon Water Resources Department, 725 Summer Street, Suite A, Salem, OR 97301-1266.