



# Oregon

Kate Brown, Governor

## Water Resources Department

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Salem, OR 97301

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March 31, 2015

EDWARD YORK / JANET A. YORK  
82952 EGGLESON LN  
ENTERPRISE, OR 97828

SUBJECT: Water Right Transfer Application T-11827

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11827. 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, 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 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 503-986-0890 or [Sarah.A.Henderson@wr.d.state.or.us](mailto:Sarah.A.Henderson@wr.d.state.or.us) if I may be of assistance.

Sincerely,

*Sarah Henderson*

Transfer Specialist  
Transfer and Conservation Section

cc: T-11827  
David Bates, District 7 Watermaster (via e-mail)  
Ralph Swinehart, CWRE #230 (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-11827, Wallowa County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN PLACE OF USE

**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.

**Applicants**

EDWARD YORK / JANET A. YORK  
82952 EGGLESON LN  
ENTERPRISE, OR 97828

**Findings of Fact**

1. On June 4, 2014, EDWARD AND JANET YORK filed an application to change the place of use under Certificate 46104. The Department assigned the application number T-11827.
2. Notice of the application for transfer was published on June 10, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 12, 2014, the Department contacted the applicants by written correspondence to notify them of deficiencies in the application, being the acres in the application and the application map did not coincide. On February 9, 2015, the applicant submitted an amended application correcting the deficiencies.
4. On March 5, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11827 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 6, 2015, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
5. The portion of the right to be transferred is as follows:  
**Certificate:** 46104 in the name of STUBBLEFIELD DITCH COMPANY (perfected under Permit S-3279)  
**Use:** IRRIGATION of 1.8 ACRES, DOMESTIC AND STOCK USE

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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**Priority Date:** FEBRUARY 10, 1917

**Rate:** 0.02 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.

**Source:** HURRICANE CREEK, a tributary of WALLOWA RIVER

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	44 E	WM	13	NW NW	1.8

6. Certificate 46104 does not describe the location of the point of diversion, however information is available from the applicant and Certified Water Right Examiner indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	44 E	WM	13	NE SW	505 FEET SOUTH AND 1340 FEET WEST FROM THE CENTER OF SECTION 13

7. Transfer Application T-11827 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	44 E	WM	13	NE NW	0.2
2 S	44 E	WM	13	NW NW	1.6

8. The Department determined that the land to which Certificate 46104 is proposed to move is already covered by Certificate 3084 for irrigation use. The overlapping portions are as follows:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	44 E	WM	13	NE NW	0.2
2 S	44 E	WM	13	NW NW	1.6

9. Upon the issuance of a final order approving Transfer T-11827, the portions of Certificate 46104 and the portions of Certificate 3084 that are appurtenant to the same place of use, as described in Finding No. 8, will become "layered" as defined by OAR 690-380-0100(4).
10. The Department is hereby notifying the applicant that, in accordance with OAR 690-380-2240, any future changes in place of use or character of use to the right evidenced by Certificate 46104 may only be approved if concurrent changes to the "layered" portion of the Certificate 3084 (described in Finding No. 8) are also changed or if an affidavit of voluntary cancellation for the "layered" portion of either certificate is submitted.

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

11. 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.

12. 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-11827.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

### **Determination and Proposed Action**

The change in place of use proposed in Transfer Application T-11827 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-11827 is approved, the final order will include the following:*

1. *The change in place of use proposed in Transfer Application T-11827 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 46104 and any related decree.*
3. *Water right Certificate 46104 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The former place of use of the transferred right shall no longer receive water under the right.*
5. *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.*
6. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 31 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 Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-986-0890 or [Sarah.A.Henderson@wrp.state.or.us](mailto:Sarah.A.Henderson@wrp.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.*