



Oregon

Kate Brown, Governor

Water Resources Department

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May 11, 2015

Applicants

RONALD R. AND KATHLEEN G. HOSEK
32120 MYRTLWOOD LANE
HERMISTON, OR 97838

AARON AND TAMMY GILBERT
32158 MYRTLWOOD LANE
HERMISTON, OR 97838

SUBJECT: Water Right Transfer Application T-11804

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11804. 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 503-986-0886 or Patrick.K.Starnes@wr.d.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application file T-11804
Greg Silbernegel, District 5 Watermaster (via e-mail)
William Porfily, Agent for the applicant (via e-mail)
Dale Van Schoiack, CWRE #333 (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-11804, Umatilla County) **PROPOSING APPROVAL OF A**
) **CHANGE IN POINT OF**
) **APPROPRIATION**

Authority

Oregon Revised Statute (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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.

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Findings of Fact

1. On May 1, 2014, Ronald R. and Kathleen G. Hosek, Vance and Debbie Crafton, and Aaron and Tammy Gilbert filed an application to change the point of appropriation under Certificate 87467. The Department assigned the application number T-11804.
2. On April 24, 2015, the agent for the applicants requested the parcel of Tax Lot 1005, Vance and Debbie Crafton, owners, be withdrawn from the application.
3. Notice of the application for transfer was published on May 13, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On March 17, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11804 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 17, 2015, for the applicants to respond. On May 4, 2015, the agent for the applicants requested 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.

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

Certificate: 87467 in the name of DENNIS AND JUDITH CULP, RODNEY D. AND MARILYN K. COX, MILTON AND GLADYS CULP (perfected under Permit G-12416)

Use: IRRIGATION OF 3.5 ACRES

Priority Date: JUNE 7, 1994

Rate: 0.043 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 ONE-EIGHTIETH 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year

Source: WELL 4 within the UMATILLA RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	28 E	WM	36	SW SE	WELL 4 (Rodney & Marilyn Cox) - 1210 FEET NORTH AND 1740 FEET WEST FROM THE SE CORNER OF SECTION 36

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Names
5 N	28 E	WM	36	NW SE	1003	1.5	RONALD R. AND KATHLEEN G. HOSEK
5 N	28 E	WM	36	NE SE	1006	2.0	AARON AND TAMMY GILBERT
Total						3.5	

6. Transfer Application T-11804 proposes to change the point of appropriation North approximately 720 feet to Hosek well (TL 1003) and Northeast approximately 850 feet to Gilbert well (TL 1006) located:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
5 N	28 E	WM	36	NW SE	1003	HOSEK WELL (UMAT 51718) - 1930 FEET NORTH AND 1740 FEET WEST FROM THE SE CORNER OF SECTION 36
5 N	28 E	WM	36	NE SE	1006	GILBERT WELL (UMAT 55893) - 1910 FEET NORTH AND 1270 FEET WEST FROM THE SE CORNER OF SECTION 36

Transfer Review Criteria (OAR 690-380-4010)

7. Pursuant to OAR 690-380-2110, any request for a change in point of appropriation is restricted to the same (source) aquifer. The Department has determined that the new (existing) proposed wells UMAT 51718 (Tax Lot 1003/Hosek) and UMAT 55893 (Tax Lot 1006/Gilbert) both appropriate the same source as that of the authorized well (UMAT 53414).

8. Water has been used within the last five years prior to the submittal of Transfer Application T-11804 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.
9. A well, 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-11804.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.
12. All other application requirements are met.

Determination and Proposed Action

The change in point of appropriation proposed in Transfer Application T-11804 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-11804 is approved, the final order will include the following:

1. *The change in point of appropriation proposed in Transfer Application T-11804 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 87467 and any related decree.*
3. *Water right Certificate 87467 is cancelled. 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 points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.*
5. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
6. *The Director may require the water user to install a totalizing flow meter or other suitable measuring device at each point of appropriation (new and existing). If the Director notifies the water user to install totalizing flow meters or other suitable measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring device in good working order and shall allow the Watermaster access to the meters or measuring devices.*

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 11 day of May, 2015.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@wrdd.state.or.us

Protests should be addressed to the attention of Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.