



# Oregon

Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

May 14, 2015

MARION L. AND MELISSA A. THEURER  
645 HERITAGE HILLS DR  
PHILOMATH, OR 97370

SUBJECT: Water Right Transfer Application T-11947

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11947. 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 [Lanaya.F.Blakely@wrд.state.or.us](mailto:Lanaya.F.Blakely@wrд.state.or.us) or (503) 986-0888, if I may be of assistance.

Sincerely,

Lanaya Blakely  
Transfer Specialist  
Transfer and Conservation Section

cc: Transfer Application file T-11947  
Joel Plahn, District 16 Watermaster (*via e-mail*)  
Tyler B. Parsons, CWRE # (*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-11947, Benton County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF DIVERSION
	)	
	)	

**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.

**Applicant**

MARION L. AND MELISSA A. THEURER  
645 HERITAGE HILLS DR  
PHILOMATH, OR 97370

**Findings of Fact**

1. On December 22, 2014, MARION L. AND MELISSA A. THEURER filed an application to change the point of diversion under Certificate 88790. The Department assigned the application number T-11947.
2. Notice of the application for transfer was published on January 6, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 31, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11947 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 30, 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.
4. The portion of the right to be transferred is as follows:  
**Certificate:** 88790 in the name of MARION L. AND MELISSA A. THEURER AND T-E RANCH LLC (perfected under Permit S-43042)  
**Use:** IRRIGATION of 0.8 ACRE  
**Priority Date:** MARCH 31, 1978

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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**Rate:** 0.01 CUBIC FOOT PER SECOND; the quantity of water diverted at the authorized point of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water available from the original point of diversion described as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
12 S	6 W	WM	2	NE NW	49	950 FEET SOUTH AND 170 FEET EAST FROM THE SW CORNER, KENNEDY DLC 77

**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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year. The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

**Source:** MARYS RIVER, tributary to the WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
11 S	6 W	WM	35	SE SW	41	250 FEET NORTH AND 150 FEET WEST FROM THE SW CORNER, KENNEDY DLC 77

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
12 S	6 W	WM	2	NE NW	49	0.80

- Transfer Application T-11947 proposes to move the authorized point of diversion approximately 200 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
12 S	6 W	WM	2	NE SW	49	70 FEET NORTH AND 55 FEET WEST FROM THE SW CORNER, KENNEDY DLC 77

- 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)]**

- Water has been used within the last five years.
- 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-11947.
- The proposed change would not result in enlargement of the right.

10. The proposed change would not result in injury to other water rights.

### **Determination and Proposed Action**

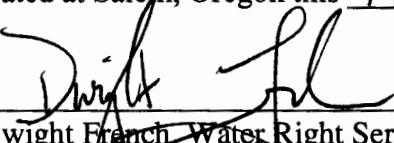
The change in point of diversion proposed in Transfer Application T-11947 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-11947 is approved, the final order will include the following:*

1. *The change in point of diversion proposed in Transfer Application T-11947 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 88790 and any related decree.*
3. *Water right Certificate 88790 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 point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *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.*
6. *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.*

7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 14 day of May, 2015.

  
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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@ wrd.state.or.us.