



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

ROBERT AND SHERRY HELMS
38306 RICHMOND ROAD
SPRAY OR 97874

SUBJECT: Water Right Transfer Application T-11735

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11735. 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 Central Oregonian 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 503-986-0886 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-11735
Ken Thiemann, District 21 Watermaster (*via e-mail*)
John Short, Water Right Services, Agent for the applicant (*via e-mail*)
Gary DeJarnett, CWRE #33 (*via e-mail*)

encs

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11735, Wheeler County	)	PROPOSING APPROVAL OF AN
	)	ADDITIONAL POINT OF DIVERSION
	)	AND A REDESCRIPTION OF
	)	CERTAIN 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.

Applicant

Robert and Sherry Helms
38306 Richmond Road
Spray OR 97874

Findings of Fact

1. On January 30, 2014, Robert and Sherry Helms filed an application for an additional point of diversion under Certificates 25317 and 48693. The Department assigned the application number T-11735.
2. Notice of the application for transfer was published on February 4, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 11, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11735 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 13, 2015, for the applicants to respond. On April 22, 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.
--

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

Certificate: 25317 in the name of W. A. HELMS (confirmed by John Day River (F))
Use: IRRIGATION OF 1.3 ACRES
Priority Date: 1887 for TRACT #2
Limit/Duty: ONE-FORTIETH of one cubic foot per second (cfs) per acre irrigated to June 1 and ONE-EIGHTIETH of one cfs per acre thereafter; further limited to 1.0 ac/ft per calendar month to June 1 and 4.0 ac/ft per acre during season APRIL 1 to SEPTEMBER 30, measured at point of diversion
Source: TAMARACK CREEK, tributary to SHOOFLY CREEK

Authorized Place of Use:

IRRIGATION					
TRACT NO. 2					
Twp	Rng	Mer	Sec	Q - Q	Acres
10 S	23 E	WM	5	SE SW	1.3

5. Certificate 25317 does not describe the point of diversion. However, information is available from the John Day River adjudication map and from the current map prepared by the applicant's Certified Water Rights Examiner (CWRE) based on a recent field visit and subsequent survey indicating that the point of diversion on Tamarack Creek is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	23 E	WM	8	NE NW	TRACT #1 - JOHNS HELMS DITCH

6. Transfer Application T-11735 proposes an additional point of diversion upstream approximately 1350 feet to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	23 E	WM	8	NE NW	1250 FEET SOUTH AND 1960 FEET EAST FROM THE SW CORNER OF SECTION 5

7. The second water right to be transferred is as follows:

Certificate: 48693 in the name of ROBERT HELMS (perfected under Permit S-39201)
Use: IRRIGATION 13.5 ACRES
Priority Date: OCTOBER 8, 1974
Rate: 0.2 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-FORTIETH 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 4.0 acre/feet per acre for each acre irrigated during the irrigation season of each year.
Source: TAMARACK CREEK, tributary to SHOOFLY CREEK

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	23 E	WM	5	SE SW	PORTABLE PUMPING BETWEEN: 100 FEET NORTH AND 1400 FEET EAST AND A POINT LOCATED 1160 FEET NORTH AND 1960 FEET EAST, BOTH FROM SW CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	23 E	WM	5	NE SW	0.3
10 S	23 E	WM	5	SE SW	11.7
10 S	23 E	WM	8	NE NW	1.5

8. Transfer application T-11735 proposes an additional point of diversion upstream approximately 1600 feet to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	23 E	WM	8	NE NW	1250 FEET SOUTH AND 1960 FEET EAST FROM THE SW CORNER OF SECTION 5

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

9. Water has been used within the five-year period prior to submittal of the transfer application 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.
10. Diversion structures, ditches and means of portable pumping 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-11735.
11. The proposed change would not result in enlargement of the rights.
12. The proposed change would not result in injury to other water rights.

Re-description of Lands

13. Water Right Certificate 48693 was issued based on a proof survey conducted by the Department (R. Norby) in August of 1976. There appears to have been no known nearby monuments at the time. Today's layout, according to the Wheeler County assessor's map and recent field survey by the applicant's CWRE, describes the irrigated lands as the same footprint but appears to be located 300 to 400 feet further to the east than the original layout of the Department's Final Proof Survey. The CWRE adds that he has worked with Department staff in the past and states there are very few survey monuments established in this area. Additionally, the Wheeler County Surveyor, Bob Bagett, confirmed that the closest known monuments were over a mile away on either side of the subject property. The Oregon Department of Transportation re-monumented two local nearby corner monuments in 1992 and in 2010. The agent for the applicant further conveys that this transfer application's map is based on more recent geo-referencing and the Sept 2011 NRCS survey of the water system.
14. The transfer application map also depicts the place of use for the decreed water right Certificate 25317 consistent with that shown on the current Wheeler County tax assessor's map 10S 23E. The 1.3 acres of Certificate 25317 should be re-described along with Certificate 48693 as it becomes obvious how the two fit together by viewing any of the maps described herein. The shift in footprint of the 1.3 acres of Certificate 25317 does not change in the quarter-quarter within Section 5, however, the footprints of both water rights

are the same total amount of acres authorized under each certificate and continue to be irrigated today and have been in the same ownership for a couple generations. The Government Land Office survey of 1874 also describes the layout of the road and creek consistent with the Wheeler assessor's office Tax Lot map for Sections 5 and 8. This leads the Department to conclude that the land to which these rights have always been appurtenant should be re-described as follows:

The following table describes the place of use description in existing Certificate 48693, appurtenant to the Helm's property, and a proposed re-description based on the findings above:

Original Description of Place of Use				Proposed Re-description		
Certificate	Section	Q-Q	Acres	Q-Q	Tax Lot	Estimated Acres
48693	5	NE SW	0.3	NE SW	300	0.1
					700	0.2
48693	5	SE SW	11.7	SE SW	1100	11.4
48693	5	SW SE	--	SW SE	1100	0.2
48693	8	NW NE	--	NW NE	1100	0.3
48693	8	NE NW	1.5	NE NW	1100	1.3
TOTAL			13.5	TOTAL		

Determination and Proposed Action

The additional point of diversion proposed in Transfer Application T-11735 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-11735 is approved, the final order will include the following:

- 1. The additional point of diversion proposed in Transfer Application T-11735 is approved.*
- 2. The right to the use of the water is restricted to beneficial use at the place of use described under Certificate 25317 and re-described herein under Certificate 48693, and is subject to all other conditions and limitations contained in Certificates 25317 and 48693 and any related decree.*
- 3. Water right Certificates 25317 and 48693 are cancelled. A new certificate will be issued describing that portion of the water right Certificate 25317 not affected by this transfer.*
- 4. The quantity of water diverted at the new additional point of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.*
- 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, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 15 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.