



Oregon

Kate Brown, Governor

Water Resources Department

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May 27, 2015

Applicant

GORHAM D. NICOL
891 CALAROGA DR
WEST LINN, OR 97068

SUBJECT: Water Right Transfer Application T-11913

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11913. 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 Frontier Advertiser 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 Lanaya.F.Blakely@wrd.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-11913
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)
John A. Short, Agent for the applicant (*via e-mail*)
Gary L. DeJarnatt, CWRE
Three Sisters Irrigation District (*via e-mail*)

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

In the Matter of Transfer Application)
T-11913, Deschutes County)
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**PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A
CHANGE IN POINT OF
APPROPRIATION AND PLACE OF
USE**

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 November 4, 2014, Gorham Nicol filed an application to change the point of appropriation and to change the place of use under Certificate 76811. The Department assigned the application number T-11913.
2. Notice of the application for transfer was published on November 11, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 6, 2015, Certificate 76811 was superseded by Certificate 89811.
4. On April 1, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11913 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 4, 2015, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
5. The portion of the right to be transferred is as follows:
Certificate: 89881 in the name of LHR, LTD (perfected under Permit G-8566)
Use: IRRIGATION of 11.6 ACRES
Priority Date: JULY 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.

Rate: 0.14 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. The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.
Source: A WELL within the DESCHUTES RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	11 E	WM	1	NW SE	1820 FEET NORTH AND 1400 FEET WEST FROM THE SE CORNER OF SECTION 1

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	11 E	WM	1	NE SE	11.6

6. Transfer Application T-11913 proposes to move the authorized point of appropriation approximately 3.5 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	12 E	WM	20	SE NE	NICOL WELL: 355 FEET NORTH AND 1077 FEET WEST OF THE EAST ¼ CORNER OF SECTION 20

7. Transfer Application T-11913 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	12 E	WM	20	NW SE	9.6
14 S	12 E	WM	20	SW SE	0.5
14 S	12 E	WM	20	NE SE	1.5

Transfer Review Criteria (OAR 690-380-4010)

8. 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.
9. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11913.
10. The proposed changes would not result in enlargement of the right.
11. The proposed changes 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 and change in place of use proposed in Transfer Application T-11913 appear 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-11913 is approved, the final order will include the following:

1. *The change in point of appropriation and change in place of use proposed in Transfer Application T-11913 are 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 89881 and any related decree.*
3. *Water right Certificate 89881 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 appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
5. *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 new point of appropriation.*
 - 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 is located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
7. *The former place of use of the transferred right shall no longer receive water under the right.*
8. *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.*

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

Dated at Salem, Oregon this 27 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 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.