



# Oregon

Kate Brown, Governor

## Water Resources Department

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October 5, 2015

VIA E-MAIL

CITY OF MILTON-FREEWATER  
PO BOX 6  
MILTON FREEWATER, OR 97862

SUBJECT: Water Right Transfer Application T-11851

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11851. 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 East 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 [Lanaya.F.Blakely@wrdd.state.or.us](mailto:Lanaya.F.Blakely@wrdd.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-11851  
Greg Silbernagel, District 5 Watermaster (*via e-mail*)  
Michael Posada, Agent for the applicant (*via e-mail*)

*encs*



6. On July 22, 2015, the Department informed the applicant's agent that additional information was necessary to prove ownership of a portion (1.03 acres) of the place of use involved in Transfer Application T-11851. The letter set forth a deadline of August 7, 2015, to respond or the Department would issue a Preliminary Determination approving the application for the portion of which authorization to pursue the transfer was demonstrated. The applicant did not provide the requested information.
7. The applicant failed to demonstrate that they were authorized to pursue the transfer on 1.03 acres of the authorized place of use. The authorized place of use involved in the transfer has been reduced from 4.19 acres to 3.16 acres.
8. The right to be transferred is as follows:

**Certificate:** 89058 in the name of ELWOOD E. PIPER (confirmed by Walla Walla River Decree)  
**Use:** IRRIGATION of 3.16 ACRES  
**Priority Date:** 1885  
**Limit/Duty:** The amount of water to which this right is entitled for the purposes aforesaid, is limited to an amount beneficially used for said purpose and shall not exceed one and one-half miner's inches per acre measured at the point of diversion.  
**Source:** WALLA WALLA RIVER, in the COLUMBIA RIVER BASIN

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	35 E	WM	2	NW SE	3.16

9. Certificate 89058 does not describe the location of the point of diversion; however, the Watermaster provided the following description from the Walla Walla River Decree:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	18	SW NW	2220 FEET SOUTH AND 100 FEET EAST FROM THE NW CORNER OF SECTION 18

10. Transfer Application T-11851 proposes to move the authorized point of diversion approximately 1.1 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SW NE	1030 FEET NORTH AND 900 FEET EAST FORM THE CENTER QUARTER CORNER OF SECTION 12

11. The Oregon Department of Fish and Wildlife 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 currently equipped with an appropriate fish screen.

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

12. Water has been used within the last five years.
13. 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-11851.
14. The proposed change would not result in enlargement of the right.
15. 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-11851 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-11851 is approved, the final order will include the following:*

1. *The change in point of diversion proposed in Transfer Application T-11851 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 89058 and any related decree.*
3. *Water right Certificate 89058 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. *The right shall be subordinate to all other water rights existing on the Little Walla Walla River Diversion.*
6. *The water user shall operate and maintain an approved fish screen at the new point of diversion. If Oregon Department of Fish and Wildlife (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.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before October 1, 2021. 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 5 day of October, 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@wrdd.state.or.us](mailto:Lanaya.F.Blakely@wrdd.state.or.us).