



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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December 24, 2015

DARREL HOLLIDAY
65126 HWY 26
JOHN DAY OR 97845

SUBJECT: Water Right Transfer Application T-11840

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11840. 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 Blue Mountain Eagle 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@wrд.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application file T-11840
Eric W. Julsrud, District 4 Watermaster (*via e-mail*)
Carl Stout, Agent and CWRE (#412) for the applicant (*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-11840, Grant County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF DIVERSION,
)	CHANGE IN PLACES OF USE, AND 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

Darrel Holliday
65126 Hwy 26
John Day, OR 97845

Agent

Carl Stout
PO Box 33
John Day, OR 97845

Findings of Fact

1. On June 12, 2014, Darrel Holliday filed an application to reflect an Historic Point of Diversion under Certificates 85323 and 85454. The Department assigned the application number T-11840.
2. Notice of the application for transfer was published on June 24, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 21, 2015, the agent for the applicant submitted a revised, amended application and map requesting to withdraw the Historic POD transfer request portion to a change in point of diversion, and to include a change in place of use under Certificate 85323.
4. On August 31, 2015, the agent for the applicant submitted another revised, amended application and map requesting to clarify the place of use.
5. On September 29, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11840 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 29, 2015, for the applicant to respond. On October 20, 2015, the agent for the applicant provided information to identify scrivener's errors in the draft Preliminary Determination regarding the point of diversion descriptions for Certificate 85454. The Department has corrected the errors and are

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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included in this document. With those corrections made, the agent, on behalf of 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.

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

Certificate: 85323 in the name of HERMAN AND FRANK OLIVER (confirmed by decree of the Circuit Court of the State of Oregon for Grant County, John Day River decree)

Use: IRRIGATION OF 167.1 ACRES AND DOMESTIC USE

Priority Dates: 1864 for Tract #1(32.1 acres), 1872 for Tract #2 (90.5 acres), 1879 for Tract #3 (17.2 acres) and 1885 for Tract #4 (27.3 acres)

Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 1/40 cubic foot per second (cfs) per acre irrigated to June 1 and 1/80 cfs per acre thereafter; further limited to 1.0 acre-foot per calendar month to June 1 and 4.0 acre-feet per acre during season April 1 to September 30.

Source: INDIAN CREEK, tributary to the JOHN DAY RIVER

Authorized Places of Use:

IRRIGATION AND DOMESTIC - TRACT #1 (1864)						
Twp	Rng	Mer	Sec	Gov't Lot	Q-Q	Acres
13 S	33 E	WM	19	-	NE NE	12.9
13 S	33 E	WM	19	-	NW NE	13.7
13 S	33 E	WM	19	-	SE NE	5.5
TOTAL:						32.1

IRRIGATION AND DOMESTIC - TRACT #2 (1872)						
Twp	Rng	Mer	Sec	Gov't Lot	Q-Q	Acres
13 S	33 E	WM	18	-	NE SW	40.0
13 S	33 E	WM	18	3	(NW SW)	20.3
13 S	33 E	WM	18	-	SE SW	30.2
TOTAL:						90.5

IRRIGATION AND DOMESTIC - TRACT #3 (1879)						
Twp	Rng	Mer	Sec	Gov't Lot	Q-Q	Acres
13 S	33 E	WM	18	-	NW SE	17.2
TOTAL:						17.2

IRRIGATION AND DOMESTIC - TRACT #4 (1885)						
Twp	Rng	Mer	Sec	Gov't Lot	Q-Q	Acres
13 S	33 E	WM	19	-	NW NE	18.6
13 S	33 E	WM	19	-	SW NE	8.7
TOTAL:						27.3

7. Certificate 85323 does not describe the point of diversion location that serves these lands on the east side of Indian Creek. However, the Department's May, 1926 adjudication map identifies diversion dam structures and ditches within the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 29, and within the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 19, both within T 13 S, R 33 E, W.M. In addition, information is available from the current Certified Water Rights Examiner's map based on a recent field visit and subsequent survey indicating that the original points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	33 E	WM	29	NE NW	POD #1 (HALL DITCH) - 285 FEET SOUTH AND 1475 FEET EAST FROM THE SE CORNER OF SECTION 19
13 S	33 E	WM	19	SE SE	POD #2 - 960 FEET NORTH AND 200 FEET WEST FROM THE SE CORNER OF SECTION 19

8. Transfer Application T-11840 proposes to change the point of diversion for the above described acres (eliminating POD #2) downstream approximately 4000 feet from the upper (POD 1) diversion to a diversion structure located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
13 S	33 E	WM	19	NE SE	NEW POD #3 - 2470 FEET NORTH AND 1000 FEET WEST FROM THE SE CORNER OF SECTION 19

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

Certificate: 85323 in the name of HERMAN AND FRANK OLIVER (confirmed by decree of the Circuit Court of the State of Oregon for Grant County, John Day River decree)

Uses: IRRIGATION OF 25.5 ACRES AND DOMESTIC USE

Priority Date: 1879 for Tract #3 (5.9 acres) and 1885 for Tract #4 (19.6 acres)

Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 1/40 of one cfs per acre irrigated to June 1 and 1/80 of one cfs per acre thereafter; further limited to 1.0 acre-foot per calendar month to June 1 and 4.0 acre-feet per acre during season April 1 to September 30.

Source: INDIAN CREEK, tributary to the JOHN DAY RIVER

Authorized Places of Use:

IRRIGATION AND DOMESTIC - TRACT #3 (1879)						
Twp	Rng	Mer	Sec	Q-Q	POD#	Acres
13 S	33 E	WM	18	SW SE	1	0.6
13 S	33 E	WM	18	SE SE	1	5.3
TOTAL:						5.9

IRRIGATION AND DOMESTIC - TRACT #4 (1885)						
Twp	Rng	Mer	Sec	Q-Q	POD#	Acres
13 S	33 E	WM	19	NE NE	1	15.0
13 S	33 E	WM	19	SE NE	1	4.6
TOTAL:						19.6

10. Transfer Application T-11840 proposes to change the place of use for the above described 25.5 acres to:

Twp	Rng	Mer	Sec	Q-Q	Priority Date	Proposed POD#	Acres
13 S	33 E	WM	18	NE SE	1879	1 and 3	4.1
13 S	33 E	WM	18	NW SE	1879	1 and 3	1.8
13 S	33 E	WM	18	NE SE	1885	1 only	12.4
13 S	33 E	WM	18	SE SE	1885	1 only	7.2
TOTAL:							25.5

11. Transfer Application T-11840 also proposes an additional point of diversion for the above described 5.9 acres (1879) downstream approximately 4000 feet from the upper (POD 1) diversion to a diversion structure located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
13 S	33 E	WM	19	NE SE	NEW POD #3 - 2470 FEET NORTH AND 1000 FEET WEST FROM THE SE CORNER OF SECTION 19

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

Certificate: 85454 in the name of H. DARRELL HOLLIDAY (confirmed by decree of the Circuit Court of the State of Oregon for Grant County, John Day River decree)

Uses: IRRIGATION OF 53.4 ACRES AND DOMESTIC

Priority Date: 1864 for 48.3 acres and 1879 for 5.1 acres

Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 1/40 cfs per acre irrigated to June 1 and 1/80 cfs per acre thereafter; further limited to 1.0 acre-foot per calendar month to June 1 and 4.0 acre-feet per acre during season April 1 to September 30.

Source: INDIAN CREEK, tributary to the JOHN DAY RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	33 E	WM	29	NE NW	POD #1 (HALL DITCH) - 285 FEET SOUTH AND 1475 FEET EAST FROM THE SE CORNER OF SECTION 19
13 S	33 E	WM	19	SE SE	POD #2 (UNNAMED DITCH) - 1270 FEET NORTH AND 1030 FEET WEST FROM THE SE CORNER OF SECTION 19

Authorized Places of Use:

IRRIGATION AND DOMESTIC - (1864)						
Twp	Rng	Mer	Sec	Q-Q	POD#	Acres
13 S	33 E	WM	18	NW SE	1	15.2
13 S	33 E	WM	18	SW SE	1	33.1
TOTAL:						48.3

IRRIGATION AND DOMESTIC - (1879)						
Twp	Rng	Mer	Sec	Q-Q	POD#	Acres
13 S	33 E	WM	19	NE NW	2	5.1
TOTAL:						5.1

13. Transfer Application T-11840 proposes an additional point of diversion downstream approximately 4900 feet located for all the acreage described above:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
13 S	33 E	WM	19	NE SE	POD #3 - 2470 FEET NORTH AND 1000 FEET WEST FROM THE SE CORNER OF SECTION 19

14. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion (POD #3) to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. ODFW stated this fish screen is necessary unless a consolidated screen meeting ODFW criteria is installed at the head of East Branch Indian Creek (approximately T13S, R33E, Sec 29, SE¼ SE¼). This diversion may be eligible for screening cost-share funds.

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

15. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
16. Diversion structures and ditches 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-11840.
17. The proposed changes would not result in enlargement of the rights.
18. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The additional point of diversion, change in places of use and change in point of diversion proposed in Transfer Application T-11840 appear 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-11840 is approved, the final order will include the following:

1. *The additional point of diversion, change in places of use and change in point of diversion proposed in Transfer Application T-11840 are approved.*
2. *Water right Certificates 85323 and 85454 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*

3. *The quantity of water diverted at the new 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.*
4. *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 the new point of diversion.*
 - 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 are located within a private structure, the Watermaster shall request access upon reasonable notice.*
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. *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 Certificates 85323 and 85454 and any related decree.*
7. *The former places of use of the transferred rights shall no longer receive water under the rights.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. 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 changes and full beneficial use of the water.*

9. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 31 day of December, 2015.



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 Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@ wrd.state.or.us.