



# Oregon

Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

January 28, 2016

VIA E-MAIL

WALLOWA LAKE COUNTY SERVICE DISTRICT

101 S RIVER ST ROOM 103

ENTERPRISE, OR 97828

wdjibutler@gmail.com

SUBJECT: Water Right Transfer Application T-12034

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12034. 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 Wallowa County Chieftain 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@wrdd.state.or.us](mailto:Patrick.K.Starnes@wrdd.state.or.us) if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application file T-12024  
David D. Bates, Watermaster District 7 (*via e-mail*)  
Michael Posada, Agent/CWRE for the applicant (*via e-mail*)

encs

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

|                                       |   |                            |
|---------------------------------------|---|----------------------------|
| In the Matter of Transfer Application | ) | PRELIMINARY DETERMINATION  |
| T-12034, Wallowa County               | ) | PROPOSING APPROVAL OF A    |
|                                       | ) | CHANGE IN PLACE OF USE AND |
|                                       | ) | CHARACTER OF USE           |

**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**

WALLOWA LAKE COUNTY SERVICE DISTRICT  
101 S RIVER ST ROOM 103  
ENTERPRISE, OR 97828  
wdjibutler@gmail.com

**Findings of Fact**

1. On April 15, 2015, WALLOWA LAKE COUNTY SERVICE DISTRICT filed an application to change the place of use and character of use under Certificate 20569. The Department assigned the application number T-12034.
2. Notice of the application for transfer was published on April 28, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 29, 2015, the applicant submitted a revised application and map.
4. On November 6, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12034 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of December 7, 2015, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination, and requested the completion date be extended to October 1, 2020.

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.

5. The right to be transferred is as follows:

**Certificate:** 20569 in the name of OREGON STATE HIGHWAY COMMISSION  
(perfected under Permit S-21554)

**Use:** PUBLIC PARK PURPOSES IN WALLOW LAKE STATE PARK

**Priority Date:** JUNE 25, 1952

**Rate:** 0.50 cubic foot per second

**Source:** UNNAMED CREEK, tributary to the WALLOWA LAKE

**Authorized Point of Diversion:**

| Twp | Rng  | Mer | Sec | Q-Q   |
|-----|------|-----|-----|-------|
| 3 S | 45 E | WM  | 20  | NW SE |

**Authorized Place of Use:**

| PUBLIC PARK PURPOSES |      |     |     |       |
|----------------------|------|-----|-----|-------|
| Twp                  | Rng  | Mer | Sec | Q-Q   |
| 3 S                  | 45 E | WM  | 20  | NE SE |
| 3 S                  | 45 E | WM  | 20  | NW SE |
| 3 S                  | 45 E | WM  | 20  | SW SE |
| 3 S                  | 45 E | WM  | 20  | SE SE |

6. The survey engineer through field examination found that the delivery system, (re-diversion), was inadvertently described as the point of diversion on the final proof survey map dated October 10, 1953. The actual point of diversion is described as follows:

| Twp | Rng  | Mer | Sec | Q-Q   | Measured Distances  |
|-----|------|-----|-----|-------|---|
| 3 S | 45 E | WM  | 20  | NE SW | 1579 FEET NORTH AND 972 FEET WEST FROM THE S <sup>1</sup> / <sub>4</sub> CORNER OF SECTION 20 |

7. Transfer Application T-12034 proposes to change the place of use of the right to:

| MUNICIPAL USES |      |     |     |       |
|----------------|------|-----|-----|-------|
| Twp            | Rng  | Mer | Sec | Q-Q   |
| 3 S            | 45 E | WM  | 20  | NE SE |
| 3 S            | 45 E | WM  | 20  | NW SE |
| 3 S            | 45 E | WM  | 20  | SW SE |
| 3 S            | 45 E | WM  | 20  | SE SE |
| 3 S            | 45 E | WM  | 21  | NE SW |
| 3 S            | 45 E | WM  | 21  | NW SW |
| 3 S            | 45 E | WM  | 21  | SW SW |
| 3 S            | 45 E | WM  | 21  | SE SW |
| 3 S            | 45 E | WM  | 28  | NW NW |
| 3 S            | 45 E | WM  | 28  | SW NW |
| 3 S            | 45 E | WM  | 29  | NE NE |
| 3 S            | 45 E | WM  | 29  | NW NE |
| 3 S            | 45 E | WM  | 29  | SW NE |
| 3 S            | 45 E | WM  | 29  | SE NE |
| 3 S            | 45 E | WM  | 29  | NE SE |
| 3 S            | 45 E | WM  | 29  | NW SE |
| 3 S            | 45 E | WM  | 29  | SW SE |
| 3 S            | 45 E | WM  | 29  | SE SE |

8. Transfer Application T-12034 proposes to change the character of use to municipal uses.

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

9. 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.
10. 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-12034.
11. The proposed changes would not result in enlargement of the right.
12. The proposed changes would not result in injury to other water rights.

**Determination and Proposed Action**

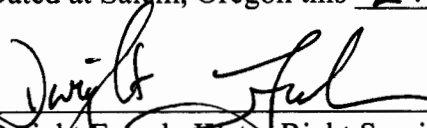
The change in place of use and change in character of use proposed in Transfer Application T-12034 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-12034 is approved, the final order will include the following:*

1. *The change in place of use and character of use proposed in Transfer Application T-12034 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 20569 and any related decree.*
3. *Water right Certificate 20569 is cancelled.*
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 each 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. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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.*

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

Dated at Salem, Oregon this 29 day of January, 2016.

  
\_\_\_\_\_  
Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

This Preliminary Determination was prepared by . Marcy Osborn. If you have questions about the information in this document, you may reach me at 541-523-8224 ext.228 or marcy.j.osborn@wrд.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.