



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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February 18, 2016

VIA E-MAIL

BUREAU OF LAND MANAGEMENT
28910 HWY 20 W
HINES, OR 97738

SUBJECT: Water Right Transfer Application T-12157

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12157. 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 Burns Times Herald 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-12157
J.R. Johnson, District 10 Watermaster (*via e-mail*)
Rodney F. Callaghan, CWRE#47698

encs

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12157, Harney County	)	PROPOSING APPROVAL OF A
	)	CHARACTER OF USE CHANGE

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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 Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

BUREAU OF LAND MANAGEMENT
28910 HWY 20 W
HINES, OR 97738
jawilcox@blm.gov

Findings of Fact

1. On September 10, 2015, the BUREAU OF LAND MANAGEMENT filed an application to change the character of use under Certificate 6985. The Department assigned the application number T-12157.
2. Notice of the application for transfer was published on September 15, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 17, 2015 the department received a modified transfer application and map removing the request for an additional point of diversion.
4. On November 18, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12157 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 16, 2015, for the applicant to respond. The applicant requested that the completion date be extended to October 1, 2022 and for the Department proceed with issuance of a Preliminary Determination is 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.
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5. The right to be transferred is as follows:

Certificate: 6985 in the name of FRANK NEWMAN (confirmed by Malheur River decree)

Use: IRRIGATION OF 34.0 ACRES

Priority Date: 1897

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1.5 acre feet per acre in any 30 day period prior to June 1st, 1.0 acre foot per acre in any 30 day period after June 1st, of each year, or 3.0 acre feet per acre during any season, diverted at a rate not to exceed ONE-TWENTIETH of a cubic foot per second per acre.

Source: ALDER CREEK

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	35 E	WM	30	NE NW	7.0
24 S	35 E	WM	30	SE NW	16.0
24 S	35 E	WM	30	NE SW	11.0
Total					34.0

6. Certificate 6985 does not describe the location of the point of diversion, however information is available from the decree tabulation and the transfer application indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	35 E	WM	30	NE NW	NEWMAN DITCH - 85 FEET SOUTH AND 2458 FEET EAST FROM THE NW CORNER OF SECTION 30

7. Transfer Application T-12157 proposes to change the character of use to wildlife/fish enhancement.
8. Transfer Application T-12157 proposes to change the place of use of the right to:

WILDLIFE/FISH ENHANCEMENT				
Twp	Rng	Mer	Sec	Q-Q
24 S	35 E	WM	30	NE NW
24 S	35 E	WM	30	SE NW
24 S	35 E	WM	30	NE SW

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 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-12157.

11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

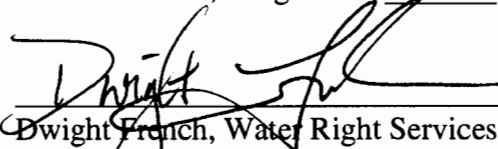
Determination and Proposed Action

The change in character of use proposed in Transfer Application T-12157 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-12157 is approved, the final order will include the following:

1. *The change in character of use proposed in Transfer Application T-12157 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 6985 and any related decree.*
3. *Water right Certificate 6985 is cancelled.*
4. *Lands receiving water shall not exceed more than 34.0 acres in any year.*
5. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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 22 day of February, 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@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.