



Oregon

Kate Brown, Governor

Water Resources Department

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February 22, 2016

STEELHEAD LLC
MICHAEL THOMASON
7090 N MARKS AVE
FRESNO, CA 93711

SUBJECT: Water Right Transfer Application T-11907

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11907. 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, 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 Department's notice.

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 503-986-0890 or Sarah.A.Henderson@wrp.state.or.us if I may be of assistance.

Sincerely,

Sarah Henderson
Transfer Specialist
Transfer and Conservation Section

cc: T-11907
Scott White, District 17 Watermaster (*via e-mail*)
Greg Kupillas, Agent and CWRE 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-11907, Klamath County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF
)	APPROPRIATION

Authority

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

Applicant

STEELHEAD LLC
MICHAEL THOMASON
7090 N MARKS AVE
FRESNO, CA 93711

Findings of Fact

1. On October 22, 2014, STEELHEAD LLC, represented by Michael Thomason, filed an application to change the point of appropriation under Water Right Permit G-11263. The Department assigned the application number T-11907.
2. On December 18, 2015, the Department issued the confirming water right Certificate 90980, in the name of Steelhead LLC.
3. On December 29, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11907 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 28, 2016, for the applicant to respond.
4. On January 25, 2016, Greg Kupillas, acting agent for the applicant, requested reconsideration on a few of the conditions included in the Draft Preliminary Determination. The Department has reconsidered these conditions and removed the groundwater level decline conditions, however, the groundwater level measurement and reporting condition and metering requirements will remain.

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. On February 8, 2016, the Department mailed a copy of the amended draft Preliminary Determination proposing to approve Transfer Application T-11907 to the applicant and agent. 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. Notice of the application for transfer was published on November 4, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. The right to be transferred is as follows:

Certificate: 90980 in the name of STEELHEAD, LLC (perfected under Permit G-11263)
Use: IRRIGATION of 146.2 ACRES
Priority Date: OCTOBER 22, 1990
Rate: 1.83 CUBIC FEET 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, shall be limited to ONE-EIGHTIETH of one cubic foot per second, 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.
Source: A WELL within the LOST RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	10 E	WM	8	NE NW	20 FEET SOUTH AND 518 FEET WEST FROM THE N1/4 CORNER OF SECTION 8

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	10 E	WM	8	NW NE	33.3
39 S	10 E	WM	8	SW NE	21.3
39 S	10 E	WM	8	NE NW	23.1
39 S	10 E	WM	8	NW NW	12.4
39 S	10 E	WM	8	SE NW	33.5
39 S	10 E	WM	8	NE SW	13.2
39 S	10 E	WM	8	NW SE	9.4
Total					146.2

8. Transfer Application T-11907 proposes to move the authorized point of appropriation approximately 45 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	10 E	WM	8	NE NW	65 FEET SOUTH AND 519 FEET WEST FROM THE N1/4 CORNER OF SECTION 8

Transfer Review Criteria (OAR 690-380-4010)

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-11907.
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.
13. All other application requirements are met.

Determination and Proposed Action

The change in point of appropriation proposed in Transfer Application T-11907 appears 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-11907 is approved, the final order will include the following:

1. *The change in point of appropriation proposed in Transfer Application T-11907 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 90980 and any related decree.*
3. *Water right Certificate 90980 is cancelled.*
4. *The quantity of water diverted at the new point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
5. *Static Water Level Conditions*

The Department requires the water user to obtain, from a qualified individual (see below), and report annual static water levels for each well on the certificate. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

The Director may require the user to obtain and report additional water levels each year if more data are needed to evaluate the aquifer system.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board. Measurements shall be submitted on forms provided by, or specified by, the Department. Measurements shall be made with equipment that is accurate to at least the standards specified in OAR 690-217-0045. The Department requires the individual performing the measurement to:

- A. Associate each measurement with an owner's well name or number and a Department well log ID; and*
 - B. Report water levels to at least the nearest tenth of a foot as depth-to-water below ground surface; and*
 - C. Specify the method of measurement; and*
 - D. Certify the accuracy of all measurements and calculations reported to the Department.*
- 6. If the number, location, source, or construction of any well deviates from that proposed in the application or required by conditions, this certificate may be subject to cancellation, unless the Department authorizes the change in writing.*
 - 7. Groundwater production from all new points of appropriation (wells) shall occur from the predominantly basalt-volcanic rock and sediment unit below the predominantly basin-fill sediment unit by having at minimum continuous casing and continuous seal from above land surface, completely through the predominantly basin-fill sediment unit, and into the predominantly basalt-volcanic rock and sediment unit. (The driller shall consult with a hydrogeologist in the Department's Groundwater Section in Salem, and the Department's lead well inspector in the Department's Well Enforcement Section in Salem.)*
 - 8. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
 - 9. 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.*
 - 10. 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 change and full beneficial use of the water.*

11. 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 Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-986-0890 or Sarah.A.Henderson@wrp.state.or.us.

Protests should be addressed to the attention of Water Rights Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.