



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

March 2, 2016

Applicant

MARLENE STANLEY
PO BOX 486
FOSSIL, OR 97830

Agent

STEVEN R. BRUCE
SKOOKUM WATER ASSOCIATES
PO BOX 80174
PORTLAND, OR 97280

SUBJECT: Water Right Transfer Application T-11670

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11670. 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 Condon Times Journal 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@wr.d.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application file T-11670
Ken Thiemann, Watermaster 21 District (*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-11670, Wheeler County	)	PROPOSING APPROVAL OF
	)	ADDITIONAL POINTS OF
	)	DIVERSION AND A CHANGE IN
	)	PLACE OF USE

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.

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Findings of Fact

1. On September 26, 2013, Rick Stanley of Stanley Ranch LLC filed an application for additional points of diversion and to change the place of use under Certificates 24959, 24960, and 24963. The Department assigned the application number T-11670.
2. On July 31, 2014 and August 1, 2014, Steven R. Bruce, agent for the applicant, submitted an amended application to better describe the place of use.
3. Notice of the application for transfer was published on October 8, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On December 24, 2015, the transfer application file was assigned to MARLENE STANLEY, PO BOX 486, FOSSIL, OR 97830.
5. On August 4, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11670 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 4, 2014, for the applicant to respond. 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 right to be transferred is as follows:

Certificate: 24959 in the name of BUTTE CREEK LAND, LIVESTOCK & LUMBER CO., A CORPORATION (confirmed by John Day River (F) decree)
Use: IRRIGATION OF 8.6 ACRES AND DOMESTIC
Priority Date: 1880
Limit/Duty: The amount of water is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE-FORTIETH of one cubic foot per second per acre irrigated to June 1 and ONE-EIGHTIETH of one cubic foot per second per acre thereafter, further limited to 1.0 acre-foot per calendar month to June 1 and 4.0 acre-feet per acre during the irrigation season April 1 to September 30, measured at the point of diversion.
Sources: BUTTE CREEK AND WEST FORK BUTTE CREEK, tributaries of the JOHN DAY RIVER

Authorized Place of Use:

IRRIGATION AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	20 E	WM	7	NE SW	5.5
6 S	20 E	WM	7	NW SW	1.0
6 S	20 E	WM	7	SW SW	1.1
6 S	20 E	WM	7	SE SW	1.0
Total					8.6

7. Certificate 24959 does describe the location of the point of diversion for this water use. However, information is available from the John Day River adjudication map and the current map prepared by the applicant's Certified Water Right Examiner based on a recent field visit and subsequent survey indicating that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	20 E	WM	7	NE SW	POD D – 2070 FEET NORTH AND 2910 FEET WEST FROM THE SE CORNER OF SECTION 7
6 S	20 E	WM	7	NE SE	POD #5 – 1570 FEET NORTH AND 990 FEET WEST FROM THE SE CORNER OF SECTION 7

8. Transfer Application T-11670 proposes additional points of diversion approximately 1500 feet downstream from the most upstream authorized point of diversion. The proposed additional points of diversion are located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	20 E	WM	7	NE SE	POD #6 – 1470 FEET NORTH AND 2310 FEET WEST FROM THE SE CORNER OF SECTION 7
6 S	20 E	WM	7	NW SE	POD #7 – 1830 FEET NORTH AND 2900 FEET WEST FROM THE SE CORNER OF SECTION 7
6 S	20 E	WM	7	NE SW	POD #8 – 1750 FEET NORTH AND 3270 FEET WEST FROM THE SE CORNER OF SECTION 7

9. Transfer Application T-11670 also proposes to change the place of use to:

IRRIGATION AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	20 E	WM	7	NE SW	2.8
6 S	20 E	WM	7	SW SW	1.8
6 S	20 E	WM	7	SE SW	4.0
Total					8.6

10. The second right to be transferred is as follows:

Certificate: 24960 in the name of BUTTE CREEK LAND, LIVESTOCK & LUMBER CO., A CORPORATION (confirmed by John Day River (F) decree)

Use: IRRIGATION OF 23.3 ACRES, DOMESTIC AND STOCK

Priority Date: 1886

Limit/Duty: The amount of water is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE-FORTIETH of one cubic foot per second per acre irrigated to June 1 and ONE-EIGHTIETH of one cubic foot per second per acre thereafter, further limited to 1.0 acre-foot per calendar month to June 1 and 4.0 acre-feet per acre during the irrigation season April 1 to September 30, measured at the point of diversion.

Sources: BUTTE CREEK AND SPRINGS, tributaries of the JOHN DAY RIVER

Authorized Place of Use:

IRRIGATION, DOMESTIC AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	20 E	WM	8	NE SE	10.6
6 S	20 E	WM	9	SE NW	0.8
6 S	20 E	WM	9	NW SW	11.9
Total					23.3

11. Certificate 24960 does describe the location of the point of diversion for this water use. However, information is available from the John Day River adjudication map and the current map prepared by the applicant's Certified Water Right Examiner based on a recent field visit and subsequent survey indicating that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	20 E	WM	9	NW SE	POD A – 1920 FEET NORTH AND 2360 FEET WEST FROM THE SE CORNER OF SECTION 9
6 S	20 E	WM	8	NW SE	POD #2 (SPRING) – 1620 FEET NORTH AND 2130 FEET WEST FROM THE SE CORNER OF SECTION 8
6 S	20 E	WM	8	NE SE	POD B – 2500 FEET NORTH AND 150 FEET WEST FROM THE SE CORNER OF SECTION 8

12. Transfer Application T-11670 proposes additional points of diversion approximately 2.5 miles downstream from the most upstream authorized point of diversion. The proposed additional points of diversion are located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	20 E	WM	9	NW SW	POD #1 – PORTABLE PUMPING (REACH) FROM 2130 FEET NORTH AND 1350 FEET EAST TO 2440 FEET NORTH AND 80 FEET WEST, BOTH FROM THE SE CORNER OF SECTION 8.
6 S	20 E	WM	8	NW SE	POD #3 – PORTABLE PUMPING (REACH) FROM 1650 FEET NORTH AND 2130 FEET WEST TO 1410 FEET NORTH AND 2960 FEET WEST, BOTH FROM THE SE CORNER OF SECTION 8.
6 S	20 E	WM	7	NE SE	POD #5 – 1570 FEET NORTH AND 990 FEET WEST FROM THE SE CORNER OF SECTION 7
6 S	20 E	WM	7	NE SE	POD #6 – 1470 FEET NORTH AND 2310 FEET WEST FROM THE SE CORNER OF SECTION 7
6 S	20 E	WM	7	NW SE	POD #7 – 1830 FEET NORTH AND 2900 FEET WEST FROM THE SE CORNER OF SECTION 7
6 S	20 E	WM	7	NE SW	POD #8 – 1750 FEET NORTH AND 3270 FEET WEST FROM THE SE CORNER OF SECTION 7

13. Transfer Application T-11670 also proposes to change the place of use to:

IRRIGATION, DOMESTIC AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	20 E	WM	7	NE SW	6.8
6 S	20 E	WM	7	SE SW	0.3
6 S	20 E	WM	7	NW SE	2.4
6 S	20 E	WM	7	SW SE	0.3
6 S	20 E	WM	8	NE SW	0.2
6 S	20 E	WM	8	NE SE	0.1
6 S	20 E	WM	8	NW SE	1.3
6 S	20 E	WM	9	NW SW	11.9
Total					23.3

14. The third right to be transferred is as follows:

Certificate: 24963 in the name of BUTTE CREEK LAND, LIVESTOCK & LUMBER CO., A CORPORATION (confirmed by John Day River (F) decree)

Use: IRRIGATION OF 3.2 ACRES, DOMESTIC AND STOCK

Priority Date: 1885

Limit/Duty: The amount of water is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE-FORTIETH of one cubic foot per second per acre irrigated to June 1 and ONE-EIGHTIETH of one cubic foot per second per acre thereafter, further limited to 1.0 acre-foot per calendar month to June 1 and 4.0 acre-feet per acre during the irrigation season April 1 to September 30, measured at the point of diversion.

Sources: BUTTE CREEK AND SPRINGS, tributaries of the JOHN DAY RIVER

Authorized Place of Use:

IRRIGATION, DOMESTIC AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	20 E	WM	7	NE SE	0.9
6 S	20 E	WM	7	NW SE	1.2
6 S	20 E	WM	8	NE SW	0.9
6 S	20 E	WM	8	NW SE	0.2
Total					3.2

15. Certificate 24960 does describe the location of the point of diversion for this water use. However, information is available from the John Day River adjudication map and the current map prepared by the applicant's Certified Water Right Examiner based on a recent field visit and subsequent survey indicating that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	20 E	WM	8	NW SE	POD #2 (SPRING) – 1620 FEET NORTH AND 2130 FEET WEST FROM THE SE CORNER OF SECTION 8
6 S	20 E	WM	8	NW SE	POD C – 1820 FEET NORTH AND 2100 FEET WEST FROM THE SE CORNER OF SECTION 8
6 S	20 E	WM	7	NE SE	POD #5 – 1570 FEET NORTH AND 990 FEET WEST FROM THE SE CORNER OF SECTION 7

16. Transfer Application T-11670 proposes additional points of diversion approximately 1.5 miles downstream from the most upstream authorized point of diversion. The proposed additional points of diversion are located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	20 E	WM	9	NW SW	POD #1 – PORTABLE PUMPING (REACH) FROM 2130 FEET NORTH AND 1350 FEET EAST TO 2440 FEET NORTH AND 80 FEET WEST, BOTH FROM THE SE CORNER OF SECTION 8.
6 S	20 E	WM	8	NW SE	POD #3 – PORTABLE PUMPING (REACH) FROM 1650 FEET NORTH AND 2130 FEET WEST TO 1410 FEET NORTH AND 2960 FEET WEST, BOTH FROM THE SE CORNER OF SECTION 8.
6 S	20 E	WM	7	NE SE	POD #4 – PORTABLE PUMPING (REACH) FROM 1520 FEET NORTH AND 530 FEET WEST TO 1560 FEET NORTH AND 970 FEET WEST, BOTH FROM THE SE CORNER OF SECTION 7.
6 S	20 E	WM	7	NE SE	POD #6 – 1470 FEET NORTH AND 2310 FEET WEST FROM THE SE CORNER OF SECTION 7
6 S	20 E	WM	7	NW SE	POD #7 – 1830 FEET NORTH AND 2900 FEET WEST FROM THE SE CORNER OF SECTION 7

17. Transfer Application T-11670 also proposes to change the place of use to:

IRRIGATION, DOMESTIC AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	20 E	WM	7	NE SE	0.2
6 S	20 E	WM	7	NW SE	1.2
6 S	20 E	WM	7	SE SE	0.7
6 S	20 E	WM	8	NE SW	1.1
Total					3.2

18. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new points of diversion to prevent fish from entering the diversion and that the diversions are not currently equipped with an appropriate fish screen. These diversion may be eligible for screening cost-share funds.

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

19. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
20. Diversion structures, ditches, and pumps 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-11670.
21. The proposed changes would not result in enlargement of the rights.
22. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The additional points of diversion and changes in place of use proposed in Transfer Application T-11670 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-11670 is approved, the final order will include the following:

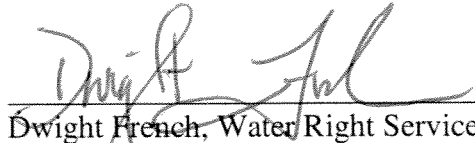
- 1. The additional points of diversion and changes in place of use proposed in Transfer Application T-11670 are approved.*
- 2. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 24959, 24960, and 24963, and any related decree.*
- 3. Water Right Certificates 24959, 24960, and 24963 are cancelled.*
- 4. The quantity of water diverted at the new additional points 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.*

5. *The former places of use of the transferred rights shall no longer receive water under the rights.*
6. *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 (new and existing). The water user shall also install a weir between the source Spring and Butte Creek to determine the amount of water available for use of the additional downstream points of diversion POD #7 and #8. The type and plans of the weir or other suitable measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.*
 - b. *The water user shall maintain the meters or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
7. *Prior to diverting water, the water user shall install an approved fish screen at each new point of diversion and shall provide to the Oregon Water Resources Department (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 points of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screens are 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.
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 2 day of March, 2016.


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

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@wrdd.state.or.us.