



Oregon

Kate Brown, Governor

Water Resources Department

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March 15, 2016

VIA E-MAIL

SKYE AND PENNY KREBS

73654 HWY 74

IONE, OR 97843

skyekrebs@yahoo.com

SUBJECT: Water Right Transfer Application T-12130

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12130. 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 East Oregonian 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 Tracy.L.Fox@ wrd.state.or.us or (503) 986-0827 if I may be of assistance.

Sincerely,

Ms. Tracy Fox

Transfer Specialist

Transfer and Conservation Section

cc: T-12130

Kenneth C. Thiemann, District 21 Watermaster (*via e-mail*)

William I. Porfily, Agent for the applicant (*via e-mail*)

Dale G. Van Schoiack, CWRE #333 (*via e-mail*)

enclosure

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

In the Matter of Transfer Application)
T-12130, Gilliam County)
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PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A
CHANGE IN POINTS OF DIVERSION,
A CHANGE IN PLACE OF USE, AND
PARTIAL CANCELLATION OF
WATER RIGHTS

Authority

Oregon Revised Statutes (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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be canceled.

Applicants

SKYE AND PENNY KREBS
73654 HWY 74
IONE, OR 97843

Findings of Fact

1. On August 10, 2015, Skye and Penny Krebs, filed a transfer application. The application proposed to change the points of diversion and change the place of use under Certificates 140, 141, 171, and 2380. The Department assigned the application number T-12130.
2. On October 6, 2015, an amended transfer application was submitted. The amended application added Certificate 112 to the transfer application.
3. Notice of the application for transfer was published on August 18, 2015, and October 13, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notices.
4. On December 16, 2015, the Department contacted the applicants by written correspondence to notify them of deficiencies in the application. The deficiencies being that the supporting documentation for the Evidence of Use Affidavit was missing and two of the Affidavits for the Partial Cancellation of Water Right were incomplete. The Department requested that the deficiencies be resolved by January 18, 2016.

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. On December 28, 2015, and January 11, 2016, the applicants/their agent submitted documentation resolving the deficiencies.
6. On January 20, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12130 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of February 22, 2016, for the applicants to respond. The applicants requested the date to make beneficial use of the water be increased to five years. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
7. In this Preliminary Determination, the Department has corrected scrivener's errors in the description of the number of acres and rate to be transferred from Certificate 2380. The corrections are in **bold**.

8. The first right to be transferred is as follows:

Certificate: 112 in the name of EMELINE E. BISBEE (confirmed by Willow Creek, in Gilliam and Morrow Counties Decree)
Use: IRRIGATION of 3.0 ACRES
Priority Date: 1901
Rate: 0.05 CUBIC FOOT PER SECOND (CFS)
Source: WILLOW CREEK, tributary to the COLUMBIA RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	22 E	WM	26	SW SE	3.00

9. Transfer Application T-12130 proposes to move the authorized point of diversion for Certificate 112 approximately 1.6 river miles (RM) downstream to POD No. 1 and approximately 3.5 RM downstream to POD No. 2 to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	22 E	WM	26	NE SW	POD NO. 2: 740 FEET SOUTH AND 1170 FEET WEST FROM THE CENTER OF SECTION 26
3 N	22 E	WM	36	SW SW	POD NO. 1: 440 FEET NORTH AND 130 FEET EAST FROM THE SW CORNER OF SECTION 36

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

Certificate: 140 in the name of E. F. FAIRHURST (confirmed by Willow Creek, in Gilliam and Morrow Counties Decree)
Use: IRRIGATION of 17.8 ACRES
Priority Date: 1892 for 0.17 CFS and 1907 for 0.13 CFS
Rate: 0.30 CFS, being 0.17 CFS with an 1892 priority date and 0.13 CFS with a 1907 priority date
Source: WILLOW CREEK, tributary to the COLUMBIA RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	22 E	WM	35	NE SE	6.50
3 N	22 E	WM	35	NW SE	2.30
3 N	22 E	WM	35	SE SE	9.00
Total:					17.80

11. Transfer Application T-12130 proposes to move the authorized point of diversion for Certificate 140 approximately 1.6 RM downstream to POD No. 1 and approximately 3.5 RM downstream to POD No. 2 to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	22 E	WM	26	NE SW	POD NO. 2: 740 FEET SOUTH AND 1170 FEET WEST FROM THE CENTER OF SECTION 26
3 N	22 E	WM	36	SW SW	POD NO. 1: 440 FEET NORTH AND 130 FEET EAST FROM THE SW CORNER OF SECTION 36

12. Transfer Application T-12130 also proposes to change the place of use of the right to:

IRRIGATION - 1892 PRIORITY					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	22 E	WM	35	SW NE	2.30
3 N	22 E	WM	35	SE NW	7.50
3 N	22 E	WM	35	NE SW	0.20
Total:					10.00

IRRIGATION - 1907 PRIORITY					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	22 E	WM	35	NE SE	6.20
3 N	22 E	WM	35	SE SE	1.60
Total:					7.80

13. The portion of the third right to be transferred is as follows:

Certificate: 141 in the name of O. E. FARNSWORTH (confirmed by Willow Creek, in Gilliam and Morrow Counties Decree)

Use: IRRIGATION of 42.4 ACRES

Priority Date: 1901

Rate: 0.71 CFS

Source: WILLOW CREEK, tributary to the COLUMBIA RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	22 E	WM	26	NE SW	19.80
3 N	22 E	WM	26	SE SW	6.10
3 N	22 E	WM	36	SW SW	16.50
Total:					42.40

14. Transfer Application T-12130 proposes to move the authorized point of diversion for Certificate 141 approximately 1.6 river miles (RM) downstream to POD No. 1 and approximately 3.5 RM downstream to POD No. 2 to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	22 E	WM	26	NE SW	POD NO. 2: 740 FEET SOUTH AND 1170 FEET WEST FROM THE CENTER OF SECTION 26
3 N	22 E	WM	36	SW SW	POD NO. 1: 440 FEET NORTH AND 130 FEET EAST FROM THE SW CORNER OF SECTION 36

15. Transfer Application T-12130 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	22 E	WM	26	NE SW	14.90
3 N	22 E	WM	26	SE SW	13.10
3 N	22 E	WM	35	NW NE	9.20
3 N	22 E	WM	35	NE NW	2.40
3 N	22 E	WM	35	NE SE	0.60
3 N	22 E	WM	35	NW SE	2.20
Total:					42.40

16. The fourth right to be transferred is as follows:

Certificate: 171 in the name of S. M. MORGAN (confirmed by Willow Creek, in Gilliam and Morrow Counties Decree)

Use: IRRIGATION of 16.0 ACRES

Priority Date: 1901

Rate: 0.27 CFS

Source: WILLOW CREEK, tributary to the COLUMBIA RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	22 E	WM	35	NW NE	6.00
3 N	22 E	WM	35	SW NE	10.00
Total:					16.00

17. Transfer Application T-12130 proposes to move the authorized point of diversion for Certificate 171 approximately 1.6 river miles (RM) downstream to POD No. 1 and approximately 3.5 RM downstream to POD No. 2 to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	22 E	WM	26	NE SW	POD NO. 2: 740 FEET SOUTH AND 1170 FEET WEST FROM THE CENTER OF SECTION 26
3 N	22 E	WM	36	SW SW	POD NO. 1: 440 FEET NORTH AND 130 FEET EAST FROM THE SW CORNER OF SECTION 36

18. Transfer Application T-12130 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	22 E	WM	35	SW NE	11.50
3 N	22 E	WM	35	SE NW	4.50
Total:					16.00

19. Certificates 112, 140, 141, and 171 do not describe the location of the point of diversion, however information is available from the applicant, and supported by the Watermaster, indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot
2 N	23 E	WM	6	NW SW	6

20. The fifth right to be transferred is as follows:

Certificate: 2380 in the name of K.W. FARNSWORTH (perfected under Permit E-239)

Use: IRRIGATION of **22.30 ACRES**

Priority Date: MARCH 13, 1915

Rate: **0.28 CFS**

Source: WILLOW CREEK, a tributary of the COLUMBIA RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	22 E	WM	35	NW NE	1.40
3 N	22 E	WM	35	SW NE	7.03
3 N	22 E	WM	35	NE NW	3.30
3 N	22 E	WM	35	SE NW	10.57
Total:					22.30

21. Certificate 2380 does not describe the location of the point of diversion, however information is available from the applicant, and supported by the Watermaster, indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q
3 N	22 E	WM	35	NE SE

22. Transfer Application T-12130 proposes to move the authorized point of diversion for Certificate 2380 approximately 0.5 RM upstream and approximately 1.2 RM downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	22 E	WM	26	NE SW	POD NO. 2: 740 FEET SOUTH AND 1170 FEET WEST FROM THE CENTER OF SECTION 26
3 N	22 E	WM	36	SW SW	POD NO. 1: 440 FEET NORTH AND 130 FEET EAST OF THE SW CORNER OF SECTION 36

23. Transfer Application T-12130 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	22 E	WM	35	SE SE	6.60
3 N	22 E	WM	36	SW SW	15.70
Total:					22.30

24. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. Listed fish species are not present at the point of diversion, the originating water right diversion is not screened, cost-share funds are not currently available, and the proposed diversion may be eligible for ODFW's cost-share program. A grace period of two years is appropriate until such time as cost-share funds become available to assist in the construction of a fish screen. If cost-share funds do not become available, the water user must screen within the indicated time period regardless of the availability of cost-share funding.

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

- 25. Water has been used within the last five years 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.
- 26. A pump, pipeline and ditch system 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-12130.
- 27. The proposed changes would not result in enlargement of the rights.
- 28. The proposed changes would not result in injury to other water rights.

Partial Cancellation of a Water Right

29. On October 6, 2015, and January 11, 2016, affidavits proposing to authorize partial cancellation for a portion of water right Certificates 140, 141, 171, and 2380 were submitted.

30. The portion of the first right to be canceled is as follows:

Certificate: 140 in the name of E. F. FAIRHURST (confirmed by Willow Creek, in Gilliam and Morrow Counties Decree)
Use: IRRIGATION of 2.7 ACRES
Rate: 0.05 CFS
Priority Date: 1907
Source: WILLOW CREEK, tributary to the COLUMBIA RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	22 E	WM	35	NW SE	2.70

31. The portion of the second right to be canceled is as follows:

Certificate: 141 in the name of O. E. FARNSWORTH (confirmed by Willow Creek, in Gilliam and Morrow Counties Decree)
Use: IRRIGATION of 2.9 ACRES

Priority Date: 1901
Rate: 0.05 CFS
Source: WILLOW CREEK, tributary to the COLUMBIA RIVER

Authorized Place of Use:

IRRIGATION					
Twtp	Rng	Mer	Sec	Q-Q	Acres
3 N	22 E	WM	26	NE SW	2.90

32. The portion of the third right to be canceled is as follows:

Certificate: 171 in the name of S. M. MORGAN (confirmed by Willow Creek, in Gilliam and Morrow Counties Decree)

Use: IRRIGATION of 3.0 ACRES

Priority Date: 1907

Rate: 0.05 CFS

Source: WILLOW CREEK, tributary to the COLUMBIA RIVER

Authorized Place of Use:

IRRIGATION					
Twtp	Rng	Mer	Sec	Q-Q	Acres
3 N	22 E	WM	35	NW NE	3.00

33. The portion of the fourth right to be canceled is as follows:

Certificate: 2380 in the name of K.W. FARNSWORTH (perfected under Permit E-239)

Use: IRRIGATION of 5.91 ACRES

Priority Date: MARCH 13, 1915

Rate: 0.08 CFS

Source: WILLOW CREEK, tributary to the COLUMBIA RIVER

Authorized Place of Use:

IRRIGATION					
Twtp	Rng	Mer	Sec	Q-Q	Acres
3 N	22 E	WM	35	NE NW	0.49
3 N	22 E	WM	35	SE NW	5.42
Total:					5.91

Determination and Proposed Action

The change in points of diversion and change in place of use proposed in Transfer Application T-12130 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned rights should be canceled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the abandoned rights will be canceled.

If Transfer Application T-12130 is approved, the final order will include the following:


- The change in points of diversion and change in place of use proposed in Transfer Application T-12130 are approved. The portions of the rights that have been abandoned are canceled.*

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 112, 140, 141, 171, 2380, and any related decree.*
3. *Water right Certificates 112, 140, 141, 171, and 2380 are canceled. New certificates will be issued describing that portion of the rights not affected by this transfer and cancellation.*
4. *The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.*
5. *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 diversion.*
 - 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.*
6. *By October 1, 2018, the water user shall install an approved fish screen at the new points of diversion. The water user may withdraw water at the new points of diversion without a screen until October 1, 2018. The water user shall provide to 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 maintain and operate the fish screen at the new points 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.
7. *The former place 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, 2021**. 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 8 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 a Reimbursement Authority Contractor. If you have questions about the information in this document, you may contact Tracy Fox at 503 986-0827 or Tracy.L.Fox@wr.d.state.or.us.

Protests should be addressed to the Water Rights Services Division, Oregon Water Resources Department, 725 Summer Street, Suite A, Salem, OR 97301-1266.

