



# Oregon

Kate Brown, Governor

**Water Resources Department**

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April 27, 2016

KENNETH R BROOKS  
34488 SHORT CORNER ROAD  
FOX OR 97856

SUBJECT: Water Right Transfer Application T-11975

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11975. 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 Blue Mountain Eagle 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@ wrd.state.or.us](mailto:Patrick.K.Starnes@ wrd.state.or.us) if I may be of assistance.

Sincerely,

Kelly Starnes  
Transfer Program Analyst  
Transfer and Conservation Section

cc: Transfer Application file T-11975  
Eric W. Julsrud, Watermaster 4 District (*via e-mail*)  
Robert D. Bagett, CWRE for the applicant

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

In the Matter of Transfer Application            )    **PRELIMINARY DETERMINATION**  
T-11975, Grant County                            )    **PROPOSING APPROVAL OF A**  
  )    **CHANGE IN POINT OF DIVERSION**  
  )    **AND 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.

**Applicant**

**KENNETH R. BROOKS**  
34488 SHORT CORNER RD  
FOX, OR 97856

**Findings of Fact**

1. On February 5, 2015, KENNETH R. BROOKS filed an application to change the point of diversion and to change the place of use under Certificate 50801. The Department assigned the application number T-11975.
2. Notice of the application for transfer was published on February 17, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 1, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11975 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 1, 2016, 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.

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.

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

**Certificate:** 50801 in the name of R.E. SPROUL (perfected under Permit S-27706)  
**Use:** IRRIGATION OF 2.4 ACRES  
**Priority Date:** AUGUST 28, 1961  
**Rate:** 0.06 CUBIC FOOT 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-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 5.0 acre-feet per acre for each acre irrigated during the irrigation season of each year; the right allowed hereunder for the appropriation of water for lands having a valid prior right shall be limited to the amount necessary to make up any deficiency in water, and the amount allowed herein, together with the amount secured under any other right existing for said lands, and shall be limited by the duty of water as fixed herein and shall conform to such reasonable rotation system as may be ordered by the proper state officer.  
**Source:** JOHN DAY RIVER, tributary to the COLUMBIA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	30 E	WM	19	SE SW	DIVERSION 3 - 220 FEET NORTH AND 2480 FEET EAST FROM THE SW CORNER OF SECTION 19

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	29 E	WM	24	NE SE	2.4

5. Transfer Application T-11975 proposes to move the authorized point of diversion approximately 4200 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	29 E	WM	24	NW SE	1990 FEET NORTH AND 1430 FEET WEST FROM THE SE CORNER OF SECTION 24

6. Transfer Application T-11975 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	29 E	WM	24	NE SE	2.4

7. 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. This diversion may be eligible for screening cost-share funds.

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

8. 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.
9. 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-11975.
10. The proposed changes would not result in enlargement of the right.
11. The proposed changes would not result in injury to other water rights.

### **Determination and Proposed Action**

The change in point of diversion and change in place of use proposed in Transfer Application T-11975 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-11975 is approved, the final order will include the following:*

1. *The change in point of diversion and change in place of use proposed in Transfer Application T-11975 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 50801 and any related decree.*
3. *Water right Certificate 50801 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the new point 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 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.*

6. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the 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.*
7. *The water user shall operate and maintain the fish screen at the new point 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.*
8. *The former place of use of the transferred right shall no longer receive water under the right.*
9. *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.*
10. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 27 day of April, 2016.

  
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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@wr.d.state.or.us.