



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

June 20, 2016

ANNA AND NEAL J. DOW, FLP
28000 SE PAULINA HWY
PRINEVILLE, OR 97754

SUBJECT: Water Right Transfer Application T-12122

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12122. 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 503-986-0886 or 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-12122
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)
John A. Short, Agent for the applicant (*via e-mail*)

encs

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12122, Crook 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.

Applicant

ANNA AND NEAL J. DOW, FLP
28000 SE PAULINA HWY
PRINEVILLE, OR 97754

Findings of Fact

1. On August 4, 2015, ANNA AND NEAL J. DOW, FLP, filed an application for additional points of diversion and to change the place of use under Certificate 1828. The Department assigned the application number T-12122.
2. Notice of the application for transfer was published on August 11, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 18, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12122 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of January 19, 2016, for the applicants to respond. The applicants 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: 1828 in the name of WM. LEDFORD (perfected under Permit S-2490)
Use: IRRIGATION of 24.0 ACRES
Priority Date: APRIL 13, 1915
Rate: 0.30 CUBIC FOOT PER SECOND
Source: MEADOW BRANCH OF HORSE HAVEN (HEAVEN) CREEK,
tributary to the CROOKED RIVER

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	19 E	WM	12	NE SE	22.0
16 S	19 E	WM	12	SE SE	2.0
Total					24.0

5. Certificate 1828 does not describe the location of the points of diversion, however information is available from applicant indicating that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
16 S	19 E	WM	2	NW NE	POD 6 - 80 FEET SOUTH AND 250 EAST OF THE C ¹ / ₄ CORNER OF SECTION 2
16 S	19 E	WM	12	SE NE	POD 7 - 320 FEET SOUTH AND 250 FEET WEST OF THE E ¹ / ₄ CORNER OF SECTION 12

6. Transfer Application T-12122 proposes additional points of diversion with approximate distances from the existing points of diversion identified as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Authorized Points of Diversions
16 S	19 E	WM	16	NW NE	POD 1 - 450 FEET SOUTH AND 3660 EAST FROM THE NW CORNER OF SECTION 16	POD 6: 2.4 MILES POD 7: 3.3 MILES
16 S	19 E	WM	17	SE NE	POD 2 - 2340 FEET SOUTH AND 230 FEET WEST FROM THE NE CORNER OF SECTION 17	POD 6: 3.2 MILES POD 7: 4.1 MILES

Transfer Application T-12122 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	19 E	WM	9	SE SW	0.7
16 S	19 E	WM	16	NW NE	5.5
16 S	19 E	WM	16	NE NW	3.8
16 S	19 E	WM	19	NE NE	6.5
16 S	19 E	WM	19	NW SE	7.5
Total					24.0

7. The Oregon Department of Fish and Wildlife (ODFW) has determined that fish screens are necessary at the new points of diversion to prevent fish from entering the diversions and that the diversions are not currently equipped with appropriate fish screens. The diversions 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 rights. There is no information in the record that would demonstrate that the rights are 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 was present within the five-year period prior to submittal of Transfer Application T-12122.
10. The proposed changes would not result in enlargement of the rights.
11. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The additional points of diversion and change in place of use proposed in Transfer Application T-12122 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-12122 is approved, the final order will include the following:

1. *The additional points of diversion and change in place of use proposed in Transfer Application T-12122 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 1828 and any related decree.*
3. *Water right Certificate 1828 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 additional points of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a weir, or, with prior approval of the Director, another suitable measuring device, at each new point of diversion.*
 - b. *The water user shall maintain the 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. *Prior to diverting water, the water user shall install an approved fish screen at the new points of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screens meet the state's criteria, or that ODFW has determined a screen is not necessary.*

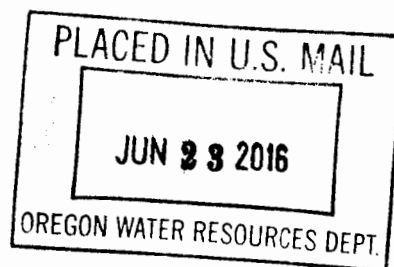
The water user shall operate and maintain the fish screens at the new points of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screens are not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screens are functioning properly.

7. *The former place of use of the transferred right shall no longer receive water under the right.*
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, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 20 day of June, 2016.



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



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