



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

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August 4, 2016

VIA E-MAIL

Applicant

MUDDY CREEKS IRRIGATION DISTRICT
PO BOX 228
HARRISBURG, OR 97446

Receiving Landowners

PAUL AND MARY ZEHR TRUST
52747 COUNTY ROAD
MILTON-FREEWATER, OR 97862

Receiving Landowners

JASON AND RUTH SCHROCK TRUST
26890 POWERLINE ROAD
HALSEY, OR 97348

SUBJECT: Water Right Transfer Application T-12194

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12194. 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@ wrd.state.or.us if I may be of assistance.

Sincerely,

Sarah Henderson
Transfer Specialist, Transfer and Conservation Section

cc: Transfer Application file T-12194
Michael J. Mattick, District 2 Watermaster (*via e-mail*)
Walter Trimmer, 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-12194, Lane and Linn Counties)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE AND
)	PARTIAL DIMINISHMENT OF A
)	WATER RIGHT

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 November 5, 2015, MUDDY CREEKS IRRIGATION DISTRICT filed an application to change the place of use under Certificate 75255. The Department assigned the application number T-12194.
2. Paul and Mary Zehr Trust and Jason and Ruth Schrock Trust are the receiving landowners who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on November 10, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On June 28, 2016, the Department contacted the agent by email to notify them of a layering issue occurring on the lands being transferred.
5. On July 5, 2016, the Department received the affidavit of diminishment, resolving the layering issue.

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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6. On July 11, 2016, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12194 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of August 10, 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.
7. The portion of the right to be transferred is as follows:

Certificate: 75255 in the name of MUDDY CREEKS IRRIGATION PROJECT
(perfected under Permit S-42759)

Use: IRRIGATION of 37.1 ACRES

Priority Date: MARCH 1, 1978

Rate: 0.46 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, is limited to ONE-EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: MCKENZIE RIVER, a tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
17 S	3 W	WM	9	NE NE	38	4440 FEET SOUTH AND 5250 FEET EAST FROM THE SE CORNER OF MANSFIELD DLC 79

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	4 W	WM	2	SE SW	6.9
14 S	4 W	WM	2	SE SE	23.3
14 S	4 W	WM	11	NE NW	1.2
14 S	4 W	WM	11	SE NW	5.7
Total					37.1

8. Certificate 75255 describes the tributary as being Columbia River; however it is more accurately defined as McKenzie River, a tributary to the Willamette River.
9. Transfer Application T-12194 proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	4 W	WM	11	NE NE	20.4
14 S	4 W	WM	11	NW NE	4.3
14 S	4 W	WM	11	SW NE	12.4
Total					37.1

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

10. 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.
11. 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-12194.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

Partial Diminution of a Water Right

14. On July 5, 2016, an affidavit certifying that a portion of a water right has been diminished from primary irrigation to supplemental irrigation and requesting partial diminution of the right was received from Paul and Mary Zehr.

15. The right to be diminished is as follows:

Certificate: 90947 in the name of PAUL ZEHR (perfected under Permit S-54109)

Use: IRRIGATION on 12.9 ACRES

Priority Date: APRIL 19, 2004

Rate: 0.13 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Period of Use: May 1 through June 30

Source: MUDDY CREEK, a tributary to EAST CHANNEL

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	4 W	WM	11	SW NE	NORTH DIVERSION – NORTH 44 DEGREES 22.091 MINUTES, WEST 123 DEGREES 8.225 MINUTES
14 S	4 W	WM	11	NW SE	SOUTH DIVERSION – NORTH 44 DEGREES 21.947 MINUTES, WEST 123 DEGREES 8.207 MINUTES

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	4 W	WM	11	NW NE	0.5
14 S	4 W	WM	11	SW NE	12.4
Total					12.9

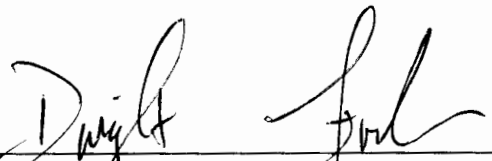
Determination and Proposed Action

The change in place of use proposed in Transfer Application T-12194 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 and the right proposed to be diminished will be diminished.

If Transfer Application T-12194 is approved, the final order will include the following:

- 1. The change in place of use proposed in Transfer Application T-12194 is approved.*
- 2. The water right for the irrigation of 12.9 acres under Water Right Certificate 90947 as described in Finding of Fact No. 15 is diminished from primary irrigation to supplemental irrigation.*
- 3. 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 75255 and any related decree.*
- 4. Water right Certificate 75255 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
- 5. Water right Certificate 90947 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and modified by the diminishment.*
- 6. The former place of use of the transferred right shall no longer receive water under the right.*
- 7. 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.*
- 8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 2 day of August, 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@wrđ.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.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act, 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>