



# Oregon

Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

August 9, 2016

VIA E-MAIL

OREGON STATE PARKS & RECREATION DEPARTMENT  
ATTN: ALICE BEALS  
725 SUMMER ST NE SUITE C  
SALEM, OR 97301

SUBJECT: Water Right Transfer Application T-11753

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11753. 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 Albany Democrat-Herald 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 503-986-0890 or [Sarah.A.Henderson@wr.d.state.or.us](mailto:Sarah.A.Henderson@wr.d.state.or.us) if I may be of assistance.

Sincerely,

Transfer Specialist

Transfer and Conservation Section

cc: Transfer Application file T-11753  
Michael J. Mattick, District 2 Watermaster (*via e-mail*)  
William Baierski, 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-11753, Linn County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF DIVERSION,
	)	PLACE OF USE, AND CHARACTER
	)	OF USE AND PARTIAL
	)	CANCELLATION OF A WATER
	)	RIGHT

**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 Rules (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 cancelled.

**Applicant**

OREGON STATE PARKS & RECREATION DEPARTMENT  
ATTN: ALICE BEALS  
725 SUMMER ST NE SUITE C  
SALEM, OR 97301

**Findings of Fact**

1. On February 20, 2014, the OREGON STATE PARKS & RECREATION DEPARTMENT filed an application for an additional point of diversion and to change the character of use under Certificate 10766. The Department assigned the application number T-11753.
2. Notice of the application for transfer was published on February 25, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 1, 2014, the Department contacted the applicant to let them know of the deficiencies in the application. The proposed change in the character of use for Certificate 10766 to domestic use is not allowed since the original use of power development is considered non-consumptive. In addition, the map and application conflicted.

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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4. On November 6, 2014, the applicant submitted amended application pages and a revised map. In addition, the applicant requested to include Certificate 14249 and submitted the appropriate fees for a character of use and place of use changes. The additions of Certificate 14249 and the other documentation resolved the deficiencies.
5. On January 22, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11753 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 22, 2015, for the applicant to respond.
6. During the review of the draft Preliminary Determination, a few scrivener's errors were found and the Department mailed a corrected copy of the draft Preliminary Determination to the applicant on February 2, 2015.
7. On May 19, 2015, the applicant submitted an amended application and application maps, to better describe the changes; the changes are incorporated within this document.
8. On June 22, 2016, the Department mailed a copy of the amended draft Preliminary Determination proposing to approve Transfer Application T-11753 to the applicants. The amended draft Preliminary Determination cover letter set forth a deadline of July 22, 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.
9. The portion of the first right to be transferred is as follows:

**Certificate:** 10766 in the name of O.M. THOMPSON & M.C. THOMPSON (perfected under Permit S-10918)

**Use:** DEVELOPMENT of 115.34 THEORETICAL HORSEPOWER (non-electrical)

**Priority Date:** JULY 1, 1933

**Rate:** 2.0 CUBIC FEET PER SECOND

**Source:** CALAPOOIA RIVER, tributary of WILLAMETTE RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
13 S	3 W	WM	8	SE SW

**Authorized Place of Use:**

POWER DEVELOPMENT				
Twp	Rng	Mer	Sec	Q-Q
13 S	3 W	WM	8	NE NW

10. Certificate 10766 does not describe the location of the point of diversion; however, information is available from applicant and CWRE indicating the point of diversion is better described as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
13 S	3 W	WM	8	SW SE	LATITUDE: NORTH 44 DEGREES 27 MINUTES 02.2 SECONDS LONGITUDE: WEST -123 DEGREES 04 MINUTES 43.7 SECONDS

11. Transfer Application T-11753 proposes to change the character of use to pond maintenance within NE NW.
12. Transfer Application T-11753 proposes to move the point of diversion approximately 2.0 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
13 S	3 W	WM	8	NE NW	LATITUDE: NORTH 44 DEGREES 27 MINUTES 40.5 SECONDS LONGITUDE: WEST -123 DEGREES 04 MINUTES 51.2 SECONDS

13. The total volume of water that may be diverted annually for pond maintenance is 1447.93 acre feet per year. (2 cfs x 365 x 1.983471=1447.93)
14. The portion of the second right to be transferred is as follows:

**Certificate:** 14249 in the name of O.M. & M.C. THOMPSON (perfected under Permit S-14008)

**Use:** IRRIGATION of 4.0 ACRES

**Priority Date:** AUGUST 2, 1939

**Rate:** 0.05 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-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:** CALAPOOIA RIVER, tributary of WILLAMETTE RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	3 W	WM	8	NE NW	BEING WITHIN AMERICUS SAVAGE DLC 50
13 S	3 W	WM	27	SE SW	BEING WITHIN ELIAS KEENEY DLC 54

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
13 S	3 W	WM	8	NE NW	50	1.7
13 S	3 W	WM	27	NE SW	54	2.3
						4.0

15. Certificate 14249 does not describe the specific locations of the points of diversion; however, information is available from applicant and CWRE indicating the points of diversion are better described as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
13 S	3 W	WM	8	NE NW	50	POD C – LATITUDE: NORTH 44 DEGREES 27 MINUTES 40.5 SECONDS LONGITUDE: WEST -123 DEGREES 04 MINUTES 51.2 SECONDS
13 S	3 W	WM	27	SE SW	54	POD D – LATITUDE: NORTH 44 DEGREES 24 MINUTES 22.3 SECONDS LONGITUDE: WEST -123 DEGREES 02 MINUTES 28.2 SECONDS

16. Transfer Application T-11753 proposes to change the place of use of a portion of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
13 S	3 W	WM	8	NE NW	50	1.8
13 S	3 W	WM	8	NW NE	50	0.5

17. Transfer Application T-11753 also proposes to change the character of use of a portion of the right to commercial:

COMMERCIAL						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
13 S	3 W	WM	8	NE NW	50	1.7

18. To prevent enlargement of the right, the use is limited to the irrigation season.
19. 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)]***

20. 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 rights are subject to forfeiture under ORS 540.610.

21. A diversion structure and ditch 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-11753.
22. The proposed changes, as conditioned, would not result in enlargement of the rights.
23. The proposed changes would not result in injury to other water rights.

***Partial Cancellation of a Water Right***

24. On June 8, 2016, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Oregon State Parks and Recreation Department.
25. The portion of the right to be cancelled is as follows:

**Certificate:** 14249 in the name of O.M. & M.C. THOMPSON (perfected under Permit S-14008)  
**Use:** IRRIGATION of 1.1 ACRES  
**Priority Date:** AUGUST 2, 1939  
**Rate:** 0.01 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-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:** CALAPOOIA RIVER, tributary of WILLAMETTE RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	3 W	WM	8	NE NW	BEING WITHIN AMERICUS SAVAGE DLC 50
13 S	3 W	WM	27	SE SW	BEING WITHIN ELIAS KEENEY DLC 54

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
13 S	3 W	WM	8	NE NW	50	1.1

**Determination and Proposed Action**

The change in point of diversion and change in place of use and change in character of use proposed in Transfer Application T-11753 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-11753 is approved, the final order will include the following:*

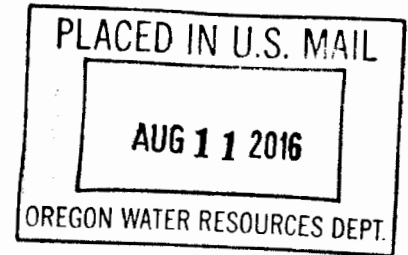
- 1. The change in point of diversion, place of use, and change in character of use proposed in Transfer Application T-11753 are approved. The portion of the right that has been abandoned is cancelled.*
- 2. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 10766 and 14249 and any related decree.*
- 3. Water right certificates 10766 and 14249 are cancelled. New certificates will be issued describing that portion of water rights 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 point 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.*

*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.*
- 7. The former place of use of the transferred water right Certificate 14249 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, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 8 day of August, 2016.

  
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Dwight French, Water Right Services Division 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@wrds.state.or.us](mailto:Sarah.A.Henderson@wrds.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>