



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

November 7, 2016

VIA E-MAIL

OREGON DEPARTMENT OF TRANSPORTATION
REGION 3 - DISTRICT 7
3500 NW STEWART PARKWAY
ROSEBURG, OR 97470

SUBJECT: Water Right Transfer Application T-12175

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12175. 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 Roseburg News Review 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@ wrd.state.or.us if I may be of assistance.

Sincerely,

Sarah Henderson

Transfer Specialist, Transfer and Conservation Section

cc: Transfer Application file T-12175
Susan Douthit, District 15 Watermaster (*via e-mail*)
Nathan R. Reed, 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-12175, Douglas 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

OREGON DEPARTMENT OF TRANSPORTATION (ODOT)
REGION 3 - DISTRICT 7
3500 NW STEWART PARKWAY
ROSEBURG, OR 97470

Findings of Fact

1. On October 7, 2015, ODOT filed an application to change the point of diversion and the place of use under Certificate 37197. The Department assigned the application number T-12175.
2. Notice of the application for transfer was published on October 13, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 22, 2016, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12175 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 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. The applicants also asked that the completion date be extended to 2019.

4. The right to be transferred is as follows:

Certificate: 37197 in the name of OREGON STATE HIGHWAY COMMISSION
 (perfected under Permit S-32632)
Use: IRRIGATION of 11.59 ACRES

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.

Priority Date: MAY 25, 1967

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-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: SOUTH UMPQUA RIVER, tributary of UMPQUA RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|-----|-----|-----|-------|---|
| 29 S | 6 W | WM | 12 | SE NE | 540 FEET NORTH AND 740 FEET WEST FROM THE SE CORNER OF THE NE 1/4 OF SECTION 12 |

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|-------|-----|-----|-----|-------|-------|
| 29 S | 5 W | WM | 7 | SW NW | 2.21 |
| 29 S | 5 W | WM | 7 | NW SW | 2.58 |
| 29 S | 6 W | WM | 12 | SE NE | 5.96 |
| 29 S | 6 W | WM | 12 | NE SE | 0.84 |
| Total | | | | | 11.59 |

5. Transfer Application T-12175 proposes to move the authorized point of diversion approximately 23.3 miles downstream to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|-----|-----|-----|-------|--|
| 27 S | 6 W | WM | 13 | NE SW | 1715 FEET NORTH AND 220 FEET WEST FROM THE SOUTH 1/4 OF SECTION 13 |

6. Transfer Application T-12175 also proposes to change the place of use of the right to:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|-------|-----|-----|-----|-------|-------|
| 27 S | 5 W | WM | 12 | SE SW | 0.76 |
| 27 S | 5 W | WM | 12 | SW SW | 0.39 |
| 27 S | 6 W | WM | 13 | NE NW | 7.37 |
| 27 S | 6 W | WM | 13 | NW NW | 2.52 |
| 27 S | 6 W | WM | 13 | SE NW | 0.55 |
| Total | | | | | 11.59 |

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 five-year period prior to submittal of the transfer application 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 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-12175.
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 place of use proposed in Transfer Application T-12175 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-12175 is approved, the final order will include the following:

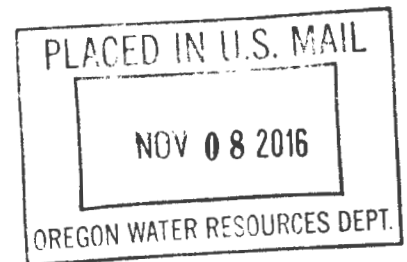
1. *The change in point of diversion and place of use proposed in Transfer Application T-12175 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 37197 and any related decree.*
3. *Water right Certificate 37197 is cancelled.*
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 the 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 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, 2019**. 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 7 day of November, 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@wr.d.state.or.us.

Protests should be addressed to the attention of Water Rights Services 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>