



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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November 18, 2016

BURNS PAIUTE TRIBE
100 PASIGO STREET
BURNS OR 97720

SUBJECT: Water Right Transfer Application T-11924

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11924. 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 Burns Times 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 503-986-0886 or Patrick.K.Starnes@wrp.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application file T-11924
J R. Johnson, Watermaster 10 District (*via e-mail*)
CK3 LLC, 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-11924, Harney and Malheur County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE , A
)	CHANGE IN CHARACTER OF USE,
)	AND PARTIAL CANCELLATION OF
)	A WATER RIGHT

Authority

Oregon Revised Statute (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 Rule (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

Burns Paiute Tribe
100 Pasigo Street
Burns OR 97720

Findings of Fact

1. On November 20, 2014, Burns Paiute Tribe filed an application to change the place of use, change the character of use from supplemental irrigation to primary irrigation and partial cancellation of a water right under Certificate 49067. The Department assigned the application number T-11924.
2. Notice of the application for transfer was published on December 2, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 29, 2015 the Department emailed the agent notifying them of the deficiencies in the application and map.
4. On August 11, 2015, the agent submitted a revised application and map correcting the deficiencies.
5. On March 22, 2016, the agent submitted a revised application and map.

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.

6. On April 29, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11924 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 29, 2016, for the applicant to respond. The applicant requested that the completion date be extended to October 1, 2020 and for the Department to 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: 49067 in the name of D E JONES (confirmed by Malheur River decree)
Use: IRRIGATION OF 46.5 ACRES AND SUPPLEMENTAL IRRIGATION OF 25.5 ACRES
Priority Dates: SEPTEMBER, 1888 AND 1901
Limit/Duty: 1.5 ACRE FEET PER ACRE IN ANY 30 DAY PERIOD PRIOR TO JUNE 1ST, 1.0 ACRE FOOT PER ACRE IN ANY 30 DAY PERIOD AFTER JUNE 1ST OF EACH YEAR, OR 3.0 ACRE FEET PER ACRE DURING ANY SEASON, DIVERTED AT A RATE NOT TO EXCEED ONE-TWENTIETH OF A CUBIC FOOT PER SECOND PER ACRE
Sources: MALHEUR RIVER AND POLE CREEK, tributary to the SNAKE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	TRACT
20 S	39 E	WM	25	SE SW	TRACT 3
20 S	39 E	WM	33	NE NW	TRACT 3
20 S	39 E	WM	33	SW NW	TRACT 3
20 S	40 E	WM	31	NE NW	TRACT 3

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Priority Date	Acres
20 S	39 E	WM	28	SE SW	1888	1.5
20 S	39 E	WM	28	NE SE	1888	10.0
20 S	39 E	WM	28	NW SE	1888	9.0
20 S	40 E	WM	31	SW NE	1888	12.3
20 S	40 E	WM	31	SE NE	1888	11.5
20 S	40 E	WM	31	NE NW	1888	2.2
Total						46.5

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Priority Date	Acres
20 S	39 E	WM	28	SW SE	1901	22.5
20 S	39 E	WM	33	NE NW	1901	3.0
Total						25.5

8. Certificate 49067 does not accurately describe the location of the points of diversion. Transfer application T-11924 gives a more accurate location description for the points of diversion. The points of diversion are described below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
20 S	39 E	WM	25	SE SW	TRACT 3 - 1900 FEET SOUTH AND 7100 FEET EAST FROM THE E $\frac{1}{4}$ CORNER OF SECTION 27
20 S	39 E	WM	33	NE NW	TRACT 3 - 630 FEET SOUTH AND 5870 FEET WEST FROM THE S $\frac{1}{4}$ CORNER OF SECTION 27
20 S	39 E	WM	33	SW NW	TRACT 3 - 1820 FEET SOUTH FROM THE S $\frac{1}{4}$ CORNER OF SECTION 27
20 S	40 E	WM	31	NE NW	TRACT 3 - 2900 FEET SOUTH FROM THE E $\frac{1}{4}$ CORNER OF SECTION 27

9. Transfer Application T-11924 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Priority Date	Acres
20 S	39 E	WM	26	NW SW	1888	3.5
20 S	39 E	WM	26	SW SW	1888	5.0
20 S	39 E	WM	27	SW NE	1888	11.5
20 S	39 E	WM	27	SE NE	1888	15.5
20 S	39 E	WM	27	SE SW	1888	4.0
20 S	39 E	WM	27	NE SE	1888	3.5
20 S	39 E	WM	27	NW SE	1888	0.5
20 S	39 E	WM	28	SW SE	1888	0.5
20 S	39 E	WM	28	SE SE	1888	2.5
20 S	39 E	WM	27	SW SW	1901	11.5
20 S	39 E	WM	28	SE SE	1901	14.0
Total						72.0

10. Transfer Application T-11924 also proposes to change the character of use from supplemental irrigation to primary irrigation for a portion of the lands identified in Finding of Fact #7, pursuant to OAR 690-380-2320.

Partial Cancellation of a Water Right

11. Pursuant to OAR 690-380-2320, an affidavit was received from Charlotte Roderique, authorized agent for the Burns Paiute Tribe, requesting to cancel the underlying primary right. The right to be cancelled upon approval of transfer T-11924 is as follows:

Certificate: 49067 in the name of D.E. JONES (confirmed by Malheur River decree)
Use: IRRIGATION OF 25.5 ACRES
Priority Date: 1901
Limit/Duty: 1.5 ACRE FEET PER ACRE IN ANY 30 DAY PERIOD PRIOR TO JUNE 1ST, 1.0 ACRE FOOT PER ACRE IN ANY 30 DAY PERIOD AFTER JUNE 1ST OF EACH YEAR, OR 3.0 ACRE FEET PER ACRE DURING ANY SEASON, DIVERTED AT A RATE NOT TO EXCEED ONE-TWENTIETH OF A CUBIC FOOT PER SECOND PER ACRE
Source: POLE CREEK, tributary to the SNAKE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	TRACT
20 S	39 E	WM	29	SE SE	TRACT 4

Authorized Place of Use to be Cancelled:

Twp	Rng	Mer	Sec	Q-Q	Acres
20 S	39 E	WM	28	SW SE	22.5
20 S	39 E	WM	33	NE NW	3.0
Total					25.5

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

12. 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.
13. 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-11924.
14. The proposed changes would not result in enlargement of the right.
15. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The change in place of use and change in character of use proposed in Transfer Application T-11924 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. The portion of the right requested to be cancelled pursuant to OAR 690-380-2320 should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the underlying primary right requested to be cancelled will be cancelled.

If Transfer Application T-11924 is approved, the final order will include the following:

1. *The change in place of use and change in character of use from supplemental irrigation to primary irrigation proposed in Transfer Application T -11924 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 Certificate 49067 and any related decree.*
3. *Water right Certificate 49067 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.*

4. *Water use measurement conditions:*

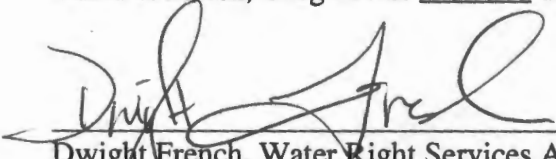
- a. *Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion (new and existing).*
- b. *The water user shall maintain the meters or measuring devices in good 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.*

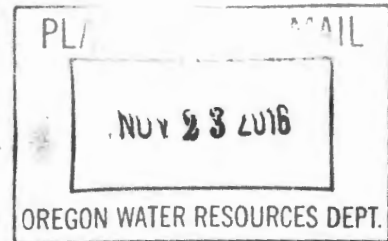
5. *The former place of use of the transferred right shall no longer receive water under the right.*

6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before October 1, 2022. 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.*

7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 21 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 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@ wrd.state.or.us.