



Oregon
Kate Brown, Governor

Water Resources Department
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February 8, 2017

KARA HARTSON PILCHER REVOCABLE LIVING TRUST or
GREGORY EUGENE PILCHER REVOCABLE LIVING TRUST
PO BOX 1680
SILVERTON, OR 97381

SUBJECT: Water Right Transfer Application T-12232

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12232. 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 Silverton Appeal Tribune 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@oregon.gov if I may be of assistance.

Sincerely,

Sarah Henderson
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-12232
Joel M. Plahn, District 16 Watermaster (*via e-mail*)
Ted Ressler, Agent and CWRE for the applicant (*via e-mail*)
Brian Posewitz, Water Watch of Oregon, Commenter (*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-12232, Marion County	)	PROPOSING APPROVAL OF
	)	CHANGES IN POINT OF DIVERSION,
	)	PLACE OF USE, AND CHARACTER
	)	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

KARA HARTSON PILCHER REVOCABLE LIVING TRUST OR
GREGORY EUGENE PILCHER REVOCABLE LIVING TRUST
PO BOX 1680
SILVERTON, OR 97381

Findings of Fact

1. On January 4, 2016, KARA HARTSON PILCHER REVOCABLE LIVING TRUST OR GREGORY EUGENE PILCHER REVOCABLE LIVING TRUST filed an application to change the point of diversion, the place of use and the character of use under Certificate 31503 and to change the character of use under Certificate 31501. The Department assigned the application number T-12232.
2. Notice of the application for transfer was published on January 12, 2016, pursuant to OAR 690-380-4000. One comment was filed in response to the notice.
3. On January 5, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12232 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of February 4, 2017, 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.
4. The comment was filed by Brian Posewitz, of Water Watch of Oregon on February 11, 2016. The comment focused on the change in non-consumptive use to a consumptive use.

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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5. The Department has reviewed the application with regards to injury and enlargement and will condition the transfer to prevent injury and enlargement.

6. The first right to be transferred is as follows:

Certificate: 31501 in the name of ELMER LORENCE (perfected under Permit R-2051)
Use: FISH CULTURE
Priority Date: JUNE 21, 1957
Rate: 38.7 ACRE-FEET
Source: UNNAMED STREAM, tributary of DRIFT CREEK, appropriated under Application R-31652, Permit R-25025

Reservoir Location:

STORAGE FOR FISH CULTURE				
Twp	Rng	Mer	Sec	Q-Q
7 S	1 W	WM	23	SE NE
7 S	1 W	WM	24	SW NW

7. Certificate 31501 does not describe the location of the point of diversion, however information is available from the Certified Water Right Examiner and applicant indicating that the center of the dam is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	1 W	WM	23	SE NE	1000 FEET NORTH AND 380 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 23

8. Transfer Application T-12232 proposes to change the character of use to multi-purpose.

9. The second right to be transferred is as follows:

Certificate: 31503 in the name of ELMER LORENCE (perfected under Permit S-25025)
Use: FISH CULTURE
Priority Date: JUNE 21, 1957
Rate: 38.7 ACRE-FEET
Source: RESERVOIR constructed under Application R-31651, Permit R-2051, a tributary of UNNAMED STREAM (DRIFT CREEK)

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
7 S	1 W	WM	23	SE NE

Authorized Place of Use:

FISH CULTURE				
Twp	Rng	Mer	Sec	Q-Q
7 S	1 W	WM	23	SE NE
7 S	1 W	WM	24	SW NW

10. The Certified Water Right Examiner and applicant have provided better information describing the authorized point of diversion (center of dam) as follow:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	1 W	WM	23	SE NE	1000 FEET NORTH AND 380 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 23

11. Transfer Application T-12232 proposes to move the authorized point of diversion approximately 124 and 749 feet easterly from the center of the dam to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	1 W	WM	23	SE NE	1060 FEET NORTH AND 270 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 23
7 S	1 W	WM	24	SW NW	830 FEET NORTH AND 350 FEET EAST FROM THE EAST 1/4 CORNER OF SECTION 23

12. Transfer Application T-12232 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	1 W	WM	23	SE NE	1.9
7 S	1 W	WM	24	SW NW	7.7
7 S	1 W	WM	24	NW NW	0.88
Total					10.48

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	1 W	WM	24	SW NW	5.0

13. Transfer Application T-12232 proposes to change the character of use to primary irrigation and supplemental irrigation.
14. Within the SW NW, Section 24, T 7 S, R 1 W, WM, there is a Primary Water Right Certificate 8883 that is layered with 5.0 acres of Certificate 31503. The 5.0 acres of Certificate 31503 will be supplemental to primary water right Certificate 8883.
15. The use of water for irrigation shall be consistent with the permits being issued in the area, including a per-acre diversion rate, annual duty of water and season of use.
16. The irrigation season is limited to March 1 through October 31 of each year, and the diversion of water at the new place of use for irrigation is limited to one-eightieth of one cubic foot per second (cfs) per acre and 2.5 acre-feet per acre during the irrigation season.
17. The total annual acre feet per acre allowed is 38.7 acre feet ($2.5 \times 15.48 = 38.7$) during the irrigation season of March 1 through October 31.
18. Transfer application T-12232 requests that the 38.7 acre feet for the fish culture be converted to irrigation use. However, because the water flows in and out at the same rate, the quantity of water to be transferred would be limited to the amount of evaporation loss (consumptive use) from the reservoir. The reservoir has an area of 10.0 acre or 435,600 square feet. Based on the best available information, the annual evaporation rate for this

location is 38 inches per year. Therefore, the amount of water available to be transferred is 31.7 acre feet (calculated by: 38 inches per year ÷ 12 inches/foot × 435,600 square feet ÷ 43,560 square feet per acre).

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. The full amount of water allowed under the existing rights was present within the five-year period prior to submittal of Transfer Application T-12232.
22. The proposed changes, as conditioned, would not result in enlargement of the rights.
23. The proposed changes, as conditioned, would not result in injury to other water rights.

Determination and Proposed Action

The change in point of diversion and change in place of use and changes in character of use proposed in Transfer Application T-12232 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-12232 is approved, the final order will include the following:

1. *The change in point of diversion and change in place of use and changes in character of use proposed in Transfer Application T-12232 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 Certificates 31501 and 31503 and any related decree.*
3. *The use of water for irrigation use under the right described by Certificate 31503 shall not exceed a rate of diversion of one-eightieth of one cubic foot per second per acre and a maximum total quantity of 31.7 acre feet of water diverted during the irrigation season of March 1 through October 31 of each year.*
4. *Water right Certificates 31501 and 31503 are cancelled.*
5. *The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.*

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, 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.*
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 February, 2017.


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@oregon.gov.

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>