



Oregon

Kate Brown, Governor

Water Resources Department
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March 27, 2017

ELK CREEK FARM LLC
ATTN: ROBERT OCHS
1868 SCHAD RD
ELKTON, OR 97436

SUBJECT: Water Right Transfer Application T-12466

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12466. 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 503-986-0827 or duff.a.martin@oregon.gov if I may be of assistance.

Sincerely,

Duff Martin
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application T-12466
Susan Douthit, District 15 Watermaster (*via e-mail*)
Ted Ressler, Agent for the applicant (*via e-mail*)

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Transfer Application) **PRELIMINARY DETERMINATION**
T-12466, Douglas County) **PROPOSING APPROVAL OF**
) **CHANGES IN 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

ELK CREEK FARM LLC
ATTN: ROBERT OCHS
1868 SCHAD RD
ELKTON, OR 97436

Findings of Fact

1. On August 29, 2016, ELK CREEK FARM, LLC, filed an application to change the place of use under Certificates 91522 and 49668. The Department assigned the application number T-12466.
2. Notice of the application for transfer was published on September 6, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 9, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12466 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 11, 2017, for the applicants to respond. The applicants request that the Department proceed with issuance of a Preliminary Determination on March 3, 2017, and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
4. The portion of the first right to be transferred is as follows:
 - Certificate:** 91522 in the name of ELK CREEK FARM LLC (perfected under Permit S-44863)
 - Use:** IRRIGATION of 21.8 ACRES
 - Priority Date:** DECEMBER 13, 1979

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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Rate: 0.27 CUBIC FOOT PER SECOND
Limit/Duty: If for irrigation, this appropriation shall be limited to ONE-EIGHTIETH of one cubic foot per second 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: ELK CREEK, tributary to UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	7 W	WM	17	SW SW	ELK CREEK POD - 1120 FEET NORTH AND 85 FEET EAST FROM THE SW CORNER OF SECTION 17

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
22 S	7 W	WM	17	NE SW	3.2
22 S	7 W	WM	17	SE SW	18.1
22 S	7 W	WM	17	NW SE	0.4
22 S	7 W	WM	17	SW SE	0.1

5. Transfer Application T-12466 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
22 S	7 W	WM	17	NW SW	11.2
22 S	7 W	WM	17	SW SW	10.6

6. The portion of the second right to be transferred is as follows:

Certificate: 49668 in the name of WARREN J. BILLICK (perfected under Permit S-20376)
Use: IRRIGATION of 21.8 ACRES
Priority Date: JUNE 8, 1951
Rate: 0.28 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 a 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: ELK CREEK, tributary of UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	7 W	WM	17	SW SW	1200 FEET NORTH AND 200 FEET EAST FROM THE SW CORNER OF SECTION 17

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
22 S	7 W	WM	17	NW SW	11.2
22 S	7 W	WM	17	SW SW	10.6

7. The applicant and certified water right examiner have supplied information that better describes the location of the authorized point of diversion as being:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	7 W	WM	17	SW SW	ELK CREEK POD - 1120 FEET NORTH AND 85 FEET EAST FROM THE SW CORNER OF SECTION 17

8. Transfer Application T-12466 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
22 S	7 W	WM	17	NE SW	3.20
22 S	7 W	WM	17	SE SW	18.1
22 S	7 W	WM	17	NW SE	0.4
22 S	7 W	WM	17	SW SE	0.1

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

9. 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.
10. A pump, pipeline, and sprinkler system 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-12466.
11. The proposed changes would not result in enlargement of the rights.
12. The proposed changes would not result in injury to other water rights.

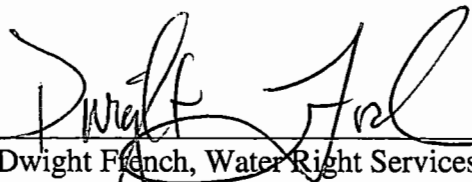
Determination and Proposed Action

If Transfer Application T-12466 is approved, the final order will include the following:

1. *The changes in place of use proposed in Transfer Application T-12466 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 91522 and 49668 any related decree.*
3. *Water right Certificates 91522 and 49668 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.*

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 existing point of appropriation.*
 - 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 meters 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.*
5. *The former place of use of the transferred rights shall no longer receive water under the rights.*
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, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 20 day of March 2017.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

This Preliminary Determination was prepared by Duff Martin. If you have questions about the information in this document, you may reach me at 503-986-0827 or Duff.A.Martin@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>