



Oregon

Kate Brown, Governor

Water Resources Department

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March 29, 2017

RICCO RANCH
PATRICK VOIGT
PO BOX 397
PRAIRIE CITY, OR 97869

SUBJECT: Water Right Transfer Application T-12528

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-15278. 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 file T-12528
Eric W. Julsrud, District 4 Watermaster (*via e-mail*)
Kyle Sullivan, 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-12528, Grant County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF DIVERSION

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

RICCO RANCH
PATRICK VOIGT
PO BOX 397
PRAIRIE CITY, OR 97869

Findings of Fact

1. On November 28, 2016, RICCO RANCH, PATRICK VOIGT filed an application to change the point of diversion under Certificate 81696. The Department assigned the application number T-12528.
2. Notice of the application for transfer was published on December 6, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 31, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12528 to the applicant. The draft Preliminary Determination set forth a deadline of March 2, 2017, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided that the applicant is authorized to pursue the transfer.
4. The portion of the right to be transferred is as follows:

Certificate:	81696 in the names of PAT AND HEDY VOIGT (confirmed by John Day River (F) decree)
Use:	IRRIGATION of 26.9 ACRES
Priority Date:	1895
Rate:	0.67 CUBIC FOOT PER SECOND

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.

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second per acre irrigated to JUNE 1 and ONE-EIGHTIETH of one cubic foot per second per acre thereafter; further limited to 1.0 acre-foot for each acre irrigated per calendar month to JUNE 1 and 3.25 acre-feet per acre during the irrigation season, APRIL 1 through JULY 20, of each year.

Source: CLEAR CREEK, tributary to the MIDDLE FORK JOHN DAY RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
11 S	35 E	WM	28	SW SE	1130 FEET NORTH AND 1500 FEET WEST FROM THE SE CORNER OF SECTION 28

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
11 S	35 E	WM	21	SE SW	11.1
11 S	35 E	WM	21	SW SE	4.6
11 S	35 E	WM	28	NE NW	11.2

5. Transfer Application T-12528 proposes to change the point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from Authorized POD
11 S	35 E	WM	28	NW SE	3000 FEET SOUTH AND 830 FEET EAST FROM THE N1/4 CORNER OF SECTION 28	1220 ft

6. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

- 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.
- 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-12528.
- The proposed change would not result in enlargement of the right.
- The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in point of diversion proposed in Transfer Application T-12528 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.

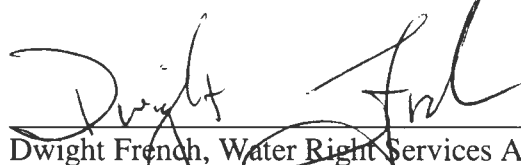
If Transfer Application T-12528 is approved, the final order will include the following:

- 1. The change in point of diversion proposed in Transfer Application T-12528 is 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 81696 and any related decree.*
- 3. Water right Certificate 81696 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, weir, parshall flume, long throat ramp flume, submerged orifice, flow restrictor or, with prior approval of the Director, another suitable measuring device, at each new point of diversion.*
 - 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.*
- 6. Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.*
- 7. 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.

8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2018**. 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 change 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 27 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>