



Oregon

Kate Brown, Governor

Water Resources Department

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April 6, 2017

ROGER W. AND LINDA M. SMITH
14778 TALLEY-DOBBINS LANE
HAINES, OR 97833

SUBJECT: Water Right Transfer Application –T-12555

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12555. 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.

In response to your questions regarding conditions 3 & 4 on page 3 of the draft preliminary determination:

1. Cancellation of Certificate 1510;

In order to transfer/change the right the certificate (1510) has to be cancelled, because later you will need to beneficially use the water transferred (flip-flop) and submit a claim of beneficial use to the Department.

2. The former place of use no longer receiving water under the right;

This language explains that the right under certificate (1510) is being transferred/changed (flip/flop) meaning that the former place of use will no longer receive water under the right (current priority date) not that it will no longer be receiving any water.

3. Issuance of a remaining right certificate;

Any remaining acreage not being transferred/changed must be on its own certificate (remaining right certificate) because there are no changes affecting this particular portion of the right.

Please do not hesitate to contact me at 503-986-0806 or arla.l.heard@oregon.gov if I may be of further assistance.

Sincerely,

Arla L Heard
Transfer Specialist
Transfer and Conservation Section

cc: T-12555
Rick M. Lusk, District 8 Watermaster (*via e-mail*)

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12555, Baker County	)	PROPOSING APPROVAL OF A
	)	CHANGE 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

ROGER W. AND LINDA M. SMITH
14778 TALLEY-DOBBINS LANE
HAINES, OR 97833

Findings of Fact

1. On January 3, 2017, ROGER W. AND LINDA M. SMITH filed an application to change the place of use under Certificate 1510. The Department assigned the application number T-12555.
2. Notice of the application for transfer was published on January 17, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 21, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12555 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 23, 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 portion of the right to be transferred is as follows:

Certificate:	1510 in the name of MICHAEL J. RELLING; ESTATE OF MICHAEL J RELLING ET AL (confirmed by Decree at Volume 1, page 277)
Use:	IRRIGATION OF 58.0 ACRES OF LAND AND DOMESTIC AND STOCK USE
Priority Date:	1881 for 29.0 ACRES; 1893 for 29.0 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.

Rate: 1.45 CUBIC FEET PER SECOND FROM MARCH 1ST THRU JULY 1ST
AND 0.725 CUBIC FEET PER SECOND FROM JULY 1ST THRU
OCTOBER 1ST

Limit/Duty: That the amount of water to which such right is entitled and hereby
confirmed for the purposes aforesaid, is limited to an amount actually
beneficially used for said purposes, and shall not exceed a rate of flow of
1.45 sec. ft. from March 1st to July 1st and 0.725 sec. ft. from July 1st to
October 1st of each year; the total quantity diverted during each irrigation
season not to exceed 145 acre feet.

Source: NORTH POWDER RIVER, tributary of POWDER RIVER

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Priority Date
7 S	38 E	WM	14	SE NW	300	20.0	1881
7 S	38 E	WM	14	SW NW	400	9.0	1881
7 S	38 E	WM	14	SW SW	600	20.0	1893
7 S	38 E	WM	14	NW SW	600	9.0	1893

5. Certificate 1510 does not describe the location of the authorized point of diversion, however the applicants have provided information indicating that the original point of diversion was Williams Ditch and Blume and Zilkey Ditch and have been combined into Bulger Ditch (January 24, 1940 , Special Order Volume 3, page 413) and indicates that the location of the authorized point of diversion is as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	18	SW SE	BULGER DITCH - 730 FEET NORTH AND 1370 FEET WEST FROM THE SE CORNER OF SECTION 18

6. Transfer Application T-12555 proposes to change the place of use (flip-flop) of the right to:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Priority Date
7 S	38 E	WM	14	SW SW	600	20.0	1881
7 S	38 E	WM	14	NW SW	600	9.0	1881
7 S	38 E	WM	14	SE NW	300	20.0	1893
7 S	38 E	WM	14	SW NW	400	9.0	1893

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 pump, pipeline, existing ditch system 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-12555.
- The proposed change would not result in enlargement of the right.
- The proposed change would not result in injury to other water rights.
- All other application requirements are met.

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-12555 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-12555 is approved, the final order will include the following:

- 1. The change in place of use proposed in Transfer Application T-12555 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 1510 and any related decree.*
- 3. Water right Certificate 1510 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
- 4. The former place of use of the transferred right shall no longer receive water under the right.*
- 5. 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.*
- 6. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 12 day of April 2017.


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

This Preliminary Determination was prepared by Arla Heard. If you have questions about the information in this document, you may reach me at 503-986-0860 or Arla.L.Heard@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>