



Oregon

Kate Brown, Governor

Water Resources Department

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May 31, 2017

ANNA MAE ALBERTSON
CREDIT SHELTER TRUST
92022 DOG LAKE RD
LAKEVIEW, OR 97630

LEO H. ALBERTSON, SR.
92022 DOG LAKE RD
LAKEVIEW, OR 97630

SUBJECT: Water Right Transfer Application T-12527

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12527. 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 Joan.M.Smith@oregon.gov or by phone at 503-986-0892, if I may be of assistance.

Sincerely,

Joan Smith

Transfer Specialist

Transfer and Conservation Section

cc: Transfer Application file T-12527
Brian M. Mayer, District 12 Watermaster (*via e-mail*)
Water Right Solutions LLC, Hollie Cannon, Agent for the applicant (*via e-mail*)
Joseph L. Strahl, CWRE #222 (*via e-mail*)

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

In the Matter of Transfer Application)
T-12527, Lake County)
)
)
)
)

PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A
CHANGE IN PLACE OF USE AND
THE PARTIAL DIMINISHMENT OF A
WATER RIGHT

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

ANNA MAE ALBERTSON
CREDIT SHELTER TRUST
92022 DOG LAKE RD
LAKEVIEW, OR 97630

Receiving Landowner

LEO H. ALBERTSON, SR.
92022 DOG LAKE RD
LAKEVIEW, OR 97630

Findings of Fact

1. On November 21, 2016, Anna Mae Albertson Credit Shelter Trust filed an application to change the place of use under Certificate 85839. The Department assigned the application number T-12527.
2. Leo H. Albertson, Sr. is the receiving landowner who will be responsible for completion of the changes.
3. 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.
4. On March 22, 2017, the Department received items resolving the potential layering of water rights on behalf of Leo H. Albertson, Sr., the landowner.
5. On March 15, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12527 to the applicants. On March 31, 2017, the Department revised the Preliminary Determination correcting scrivener’s errors. The draft Preliminary Determination cover letter set forth a deadline of April 29, 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.

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

Certificate: 85839 in the name of LAKEVIEW WATER USERS, INC.
Use: IRRIGATION OF 10.0 ACRES
Priority Dates: JANUARY 21, 1907, JULY 31, 1908
Rate: 0.37 CUBIC FEET PER SECOND (CFS), BEING 0.19 CFS FROM DREWS CREEK AND RESERVOIR AND 0.17 CFS FROM COTTONWOOD CREEK AND RESERVOIR
Source: DREWS CREEK, a tributary of GOOSE LAKE

Authorized Points of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances | Source |
|------|------|-----|-----|-------|---|----------------------------|
| 38 S | 19 E | WM | 29 | NW SW | 580 FEET SOUTH AND 900 FEET EAST FROM THE W1/4 CORNER OF SECTION 29 | Cottonwood Creek Reservoir |
| 39 S | 19 E | WM | 16 | NE NE | 860 FEET SOUTH AND 1120 FEET WEST FROM THE NE CORNER OF SECTION 16 | Cottonwood Creek |
| 40 S | 18 E | WM | 5 | SW SE | 120 FEET NORTH AND 1820 FEET WEST FROM THE SE CORNER OF SECTION 5 | Drews Creek Reservoir |
| 40 S | 18 E | WM | 11 | SE NW | 1850 FEET SOUTH AND 3400 FEET WEST FROM THE NE CORNER OF SECTION 11 | Drews Creek |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 39 S | 18 E | WM | 25 | SE SE | 10.0 |

7. Transfer Application T-12527 proposes to change the place of use of the right to:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 40 S | 19 E | WM | 8 | NE NW | 0.1 |
| 40 S | 19 E | WM | 8 | SE NW | 9.9 |
| Total | | | | | 10.0 |

8. On March 15, 2017, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-12527 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 16, 2017 for the applicant to respond. The applicant 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.

Partial Diminution of a Water Right

9. On March 22, 2017, the department received an affidavit requesting that a portion of Certificate 65309 be diminished. The portion of the right to be diminished is as follows:

Certificate: 65309 in the name of LEO H. ALBERTSON
(perfected under Permit 45806)
Use: PRIMARY IRRIGATION OF 10.0 ACRES
Priority Dates: JANUARY 19, 1981
Rate: 0.25 CUBIC FEET 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 diversion of ONE-FORTIETH of one cubic foot per second (or its equivalent) and 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year. THE RIGHT ALLOWED HEREIN SHALL BE LIMITED TO ANY DEFICIENCY IN THE AVAILABLE SUPPLY OF ANY PRIOR RIGHT EXISTING FOR THE SAME LAND AND SHALL NOT EXCEED THE LIMITATION ALLOWED HEREIN. THIS RIGHT IS SUBJECT TO THE TERMS AND CONDITIONS OF A STIPULATION WITH LAKEVIEW WATER USERS, INC. DATED MARCH 2, 1981, RECORDED AT VOLUME 6, PAGE 884, MISCELLANEOUS RECORDS OF THE WATER RESOURCES DIRECTOR.
Source: AN UNNAMED DRAINAGE WAY, a tributary of GOOSE LAKE

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|--|
| 40 S | 19 E | WM | 8 | SE NW | 1980 FEET SOUTH AND 2710 FEET WEST FROM THE NE CORNER OF SECTION 8 |

Authorized Place of Use to be diminished to Supplemental Irrigation:

| SUPPLEMENTAL IRRIGATION | | | | | |
|-------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 40 S | 19 E | WM | 8 | NE NW | 0.1 |
| 40 S | 19 E | WM | 8 | SE NW | 9.9 |
| Total | | | | | 10.0 |

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

10. Evidence was submitted with the application indicating that 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.
11. 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-12527.
12. The proposed changes would not result in enlargement of the right.

13. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

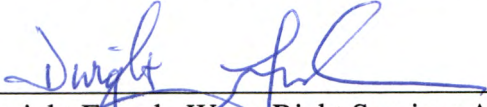
The change in place of use proposed in Transfer Application T-12527 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the right proposed to be diminished shall be diminished to supplemental irrigation.

If Transfer Application T-12527 is approved, the final order will include the following:

- 1. The change in place of use proposed in Transfer Application T-12527 is approved. The portion of Certificate 65309 that has been diminished is diminished.*
- 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 85839 and any related decree.*
- 3. Water right Certificate 85839 is modified. The Department will issue a superseding certificate describing those modifications when determined it is necessary for record keeping and will complete the processing of other pending transfers which also modify Certificate 85839.*
- 4. Certificate 68309 is cancelled, a new certificate will be issued describing that portion of the right not affected by this transfer and confirming the portion diminished..*
- 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, 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 changes and full beneficial use of the water.*

7. *After satisfactory proof of beneficial use is received, the Department will issue a superseding certificate in the name of Lake Water Users, Inc. describing the right when it determines that it is necessary for record keeping.*

Dated at Salem, Oregon this 31 day of May, 2017



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

This Preliminary Determination was prepared by Reimbursement Authority Contractor and reviewed by Department Staff. If you have any questions with regard to this document please contact Joan Smith
Joan.M.SMITH@oregon.gov