



Oregon

Kate Brown, Governor

Water Resources Department

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July 13, 2017

VIA E-MAIL

CATHY JOHNSON
175 HIGHWAY 82
LOSTINE, OR 97857
cathy@silvercreekteam.com

SUBJECT: Water Right Transfer Application T-12603

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12603. 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 503-986-0886 or Patrick.K.Starnes@oregon.gov if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application T-12603
David D. Bates, District 7 Watermaster (*via e-mail*)
Commenters

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12603, Wallowa County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL 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

CATHY JOHNSON
175 HIGHWAY 82
LOSTINE OR 97857
cathy@silvercreekteam.com

Findings of Fact

1. On March 3, 2017, CATHY JOHNSON filed an application for an additional point of diversion under Certificate 47111. The Department assigned the application number T-12603.
2. Notice of the application for transfer was published on March 14, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 26, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12603 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 26, 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.

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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4. The right to be transferred is as follows:

Certificate: 47111 in the name of M.H. GILLESPIE (confirmed by Wallowa River Decree)

Use: IRRIGATION OF 18.0 ACRES AND LIVESTOCK

Priority Date: 1881

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially use for said purposes, and shall not exceed 1.5 acre feet per acre during any period of 30 days prior to July 31st of each year, and thereafter not to exceed 1.0 acre foot per acre during the entire remainder of the irrigation season.

Source: LOSTINE RIVER AKA SOUTH FORK WALLOWA RIVER, tributary to the WALLOWA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	22	NW NE	830 FEET SOUTH AND 2700 FEET EAST FROM THE NW CORNER OF SECTION 22

Authorized Place of Use:

IRRIGATION AND LIVESTOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	43 E	WM	15	NW NE	18.0

5. Transfer Application T-12603 proposes an additional point of diversion approximately 485 feet downstream located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	22	NE NW	400 FEET SOUTH AND 2470 FEET EAST FROM THE NW CORNER OF SECTION 22

6. The Oregon Department of Fish and Wildlife 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 currently equipped with an appropriate fish screen.

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

7. 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.

8. 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-12603.

9. The proposed change would not result in enlargement of the right.

10. The proposed change would not result in injury to other water rights.

Determination and Proposed Action


The additional point of diversion proposed in Transfer Application T-12603 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-12603 is approved, the final order will include the following:

1. *The additional point of diversion proposed in Transfer Application T-12603 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 47111 and any related decree.*
3. *Water right Certificate 47111 is cancelled.*
4. *The quantity of water diverted at the additional point of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *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.*
6. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a suitable measuring device, at each point of diversion (new and existing).*
 - b. *The water user shall maintain the measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the measuring devices; provided however, the measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
7. *The water user shall operate and maintain an approved fish screen at the new point of diversion. If Oregon Department of Fish and Wildlife (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 13 day of July 2017.


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

This Preliminary Determination was prepared by Marcy Osborn. If you have questions about the information in this document, you may reach me at 541-523-8224 ext.228 or marcy.j.osborn@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>