



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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October 23, 2017

BEAVER WATER DISTRICT
PO BOX 122
BEAVER, OR 97108

SUBJECT: Water Right Transfer Application T-12457

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12457. 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 and in the Tillamook Headlight-Herald newspaper, 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 last date of newspaper publication.

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-12457
Nikki M. Hendricks, District 1 Watermaster (*via e-mail*)
HBH Consulting Engineers, 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-12457, Tillamook County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF DIVERSION,
)	CHANGE IN PLACE OF USE, AND A
)	CHANGE IN CHARACTER 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

BEAVER WATER DISTRICT
PO BOX 122
BEAVER, OR 97112

Findings of Fact

1. On August 5, 2016, Beaver Water District filed an application to change the point of diversion, place of use and character of use under Certificate 15777 and to change the place of use under Certificate 82602. The Department assigned the application number T-12457.
2. Notice of the application for transfer was published on August 16, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 19, 2017, the Department contacted the applicant with a deficiency in the application. Certificate 82602 was proposed to be included in the transfer application. However, on May 18, 2017, the agent requested removal of Certificate 82602 from the application.
4. On June 1, 2017, the Applicant submitted a revised application map removing reference to Certificate 82602.
5. On June 8, 2017, the Department contacted the applicant with a deficiency in the revised application map. The revised map does not show the location of the proposed point of diversion. On June 14, 2017, the Department received a revised application map.

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. On August 17, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12457 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 18, 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.

7. The right to be transferred is as follows:

Certificate: 15777 in the name of BEN L. BECKER (perfected under Permit S-15912)

Use: MUNICIPAL USES

Priority Date: SEPTEMBER 7, 1944

Rate: 0.33 CUBIC FOOT PER SECOND

Source: HESTER CREEK, tributary of BEAVER CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
3 S	9 W	WM	29	NW NE

Authorized Place of Use:

MUNICIPAL				
Twp	Rng	Mer	Sec	Q-Q
3 S	9 W	WM	29	SW NW
3 S	9 W	WM	29	NW SW
3 S	9 W	WM	30	NE SE
3 S	9 W	WM	30	SE SE

8. Certificate 15777 does not describe the measured distance; however, information is available from the applicant and CWRE indicating the point of diversion is better described as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 S	9 W	WM	29	NW NE	NORTH 34 DEGREES 39 MINUTES EAST, 4658.6 FEET FROM THE SW CORNER OF THE NWSW OF SECTION 29

9. Transfer Application T-12457 proposes to move the authorized point of diversion approximately 0.9 mile downstream to a point of diversion on Beaver Creek:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	9 W	WM	30	NE SE	420 FEET NORTH AND 380 FEET WEST FROM THE SE CORNER OF THE NESE OF SECTION 30

10. Transfer Application T-12457 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q
3 S	9 W	WM	20	NE NW
3 S	9 W	WM	20	NW NW
3 S	9 W	WM	20	SW NW
3 S	9 W	WM	20	SE NW
3 S	9 W	WM	20	NE SW
3 S	9 W	WM	20	NW SW
3 S	9 W	WM	20	SW SW
3 S	9 W	WM	20	SE SW
3 S	9 W	WM	29	NW NE
3 S	9 W	WM	29	SW NE
3 S	9 W	WM	29	NE NW
3 S	9 W	WM	29	NW NW
3 S	9 W	WM	29	SW NW
3 S	9 W	WM	29	SE NW
3 S	9 W	WM	29	NE SW
3 S	9 W	WM	29	NW SW
3 S	9 W	WM	29	SW SW
3 S	9 W	WM	29	SE SW
3 S	9 W	WM	30	NE SW
3 S	9 W	WM	30	SE SW
3 S	9 W	WM	30	NE SE
3 S	9 W	WM	30	NW SE
3 S	9 W	WM	30	SW SE
3 S	9 W	WM	30	SE SE
3 S	9 W	WM	31	NW NE
3 S	9 W	WM	31	SW NE
3 S	9 W	WM	31	NE NW
3 S	9 W	WM	31	SW NW
3 S	9 W	WM	31	SE NW
3 S	9 W	WM	31	NE SW
3 S	9 W	WM	31	NW SW
3 S	9 W	WM	31	NW SE
3 S	10 W	WM	36	SE NE
3 S	10 W	WM	36	NE SE

11. Transfer Application T-12457 proposes to change the character of use to Quasi-Municipal.
12. 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)]

13. 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.

14. A diversion structure and pipelines 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-12457.
15. The proposed changes would not result in enlargement of the rights.
16. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in point of diversion, place of use, and character of use proposed in Transfer Application T-12457 appear 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-12457 is approved, the final order will include the following:

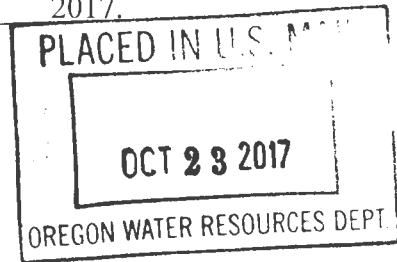
1. *The change in point of diversion, place of use, and character of use proposed in Transfer Application T-12457 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 15777 and any related decree.*
3. *Water right Certificate 15777 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 on Hester Creek.*
5. *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 each new point of diversion.*
 - 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 meter 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.*
6. *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.*

7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2019**. 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.*
8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 19 day of October 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>