



Oregon

Kate Brown, Governor

Water Resources Department

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December , 2017

ELAINE C. ROBERTS TRUST
PO BOX 667
COTTAGE GROVE, OR 97424

SUBJECT: Water Right Transfer Application T-12624

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12624. 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 503-986-0814 or Jessica.L.Joye@oregon.gov, if I may be of assistance.

Sincerely,

Jessica Joye
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application T-12624
Lanaya Blakely, District 2 Watermaster (via e-mail)
Steven I. Recca, Agent for the applicant (via e-mail)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12624, Lane 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

ELAINE C. ROBERTS TRUST
PO BOX 667
COTTAGE GROVE, OR 97424

Findings of Fact

1. On March 27, 2017, ELAINE C. ROBERTS TRUST filed an application to change the point of diversion under Certificates 26393 and 35649. The Department assigned the application number T-12624.
2. Notice of the application for transfer was published on April 4, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 30, 2017, the Department sent a deficiency letter to the applicant's agent, addressing the discrepancies found in Table 2 of the application.
4. On November 8, 2017, the applicant's agent sent a revised Table 2 of the application by email, clarifying the discrepancies addressed in the Departments letter sent on October 30, 2017.
5. On November 13, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12624 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 13, 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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6. The portion of the first right to be transferred is as follows:

Certificate: 26393 in the name of WEYERHAEUSER CO., also appearing of record as WEYERHAEUSER TIMBER CO., AND WALTER A. AND DUTEE WOODARD (perfected under Permit S-23739)

Use: MAINTENANCE OF LOG POND AND MAINTENANCE OF RECREATION AND FISH CULTURE POND, CONSTRUCTED UNDER APPLICATION R-30161, PERMIT R-1774

Priority Date: JULY 27, 1955

Rate: 0.77 CUBIC FOOT PER SECOND (CFS); BEING 0.75 CFS FOR MAINTENANCE OF LOG POND, AND 0.02 CUBIC FOOT PER SECOND FOR MAINTENANCE OF RECREATION AND FISH CULTURE POND

Source: COAST FORK WILLAMETTE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
21 S	3 W	WM	5	SE NE	41

Authorized Place of Use:

MAINTENANCE OF LOG POND AND MAINTENANCE OF RECREATION AND FISH CULTURE POND					
Twp	Rng	Mer	Sec	Q-Q	DLC
21 S	3 W	WM	5	NE NE	40
21 S	3 W	WM	5	SW NE	40
21 S	3 W	WM	5	SE NE	40

7. A scrivener's error exists in the description of the point of diversion under Certificate 26393, indicating that the authorized point of diversion is located within Donation Land Claim (DLC) #41, however, based on the accompanying map and tax lot map, the point of diversion is located within DLC #40.
8. Certificate 26393 does not provide a measured distance for the point of diversion, however information is available from the applicant indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
21 S	3 W	WM	5	SE NE	40	POD 2 – 1900 FEET SOUTH AND 920 FEET WEST FROM THE NE CORNER OF SECTION 5

9. Transfer Application T-12624 proposes to move the authorized point of diversion approximately 60 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
21 S	3 W	WM	5	SE NE	40	POD 1 - 1840 FEET SOUTH AND 920 FEET WEST FROM THE NE CORNER OF SECTION 5

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

Certificate: 35649 in the name of WALTER A. WOODARD
(perfected under Permit S-30408)
Use: IRRIGATION OF 4.5 ACRES
Priority Date: APRIL 29, 1965
Rate: 0.057 CUBIC FOOT PER SECOND FROM RIVER
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 ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: COAST FORK WILLAMETTE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
21 S	3 W	WM	5	SE NE	RIVER - 1900 FEET SOUTH AND 920 FEET WEST FROM THE NE CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
21 S	3 W	WM	5	NE NE	43	2.6
21 S	3 W	WM	5	NW NE	43	0.7
21 S	3 W	WM	5	SW NE	43	0.2
21 S	3 W	WM	5	SE NE	43	1.0
TOTAL						4.5

11. A scrivener's error exists in the description of the place of use under Certificate 35649 with respect to the specified DLC. The appropriate description of the place of use shall be described as follows:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
21 S	3 W	WM	5	NE NE	40	2.6
21 S	3 W	WM	5	NW NE	40	0.7
21 S	3 W	WM	5	SW NE	40	0.2
21 S	3 W	WM	5	SE NE	40	1.0
TOTAL						4.5

12. Transfer Application T-12624 proposes to move the authorized point of approximately 60 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
21 S	3 W	WM	5	SE NE	40	POD 1 – 1840 FEET SOUTH AND 920 FEET WEST FROM THE NE CORNER OF SECTION 5

13. The Oregon Department of Fish and Wildlife (ODFW) 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 not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

14. 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 rights are subject to forfeiture under ORS 540.610.
15. A pump connected to a pipeline sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-12624.
16. The proposed changes would not result in enlargement of the rights.
17. The proposed changes would not result in injury to other water rights.
18. All other application requirements are met.

Determination and Proposed Action

The change in points of diversion proposed in Transfer Application T-12624 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-12624 is approved, the final order will include the following:

1. *The changes in points of diversion proposed in Transfer Application T-12624 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 Certificates 26393 and 35649 and any related decree.*
3. *Water right Certificates 26393 and 35649 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer*
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. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the Oregon Water Resources Department (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.

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 the 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 meters or measuring devices; provided however, where the meter or measuring device are located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *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.*
7. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 28 day of December 2017.


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

This Preliminary Determination was prepared by Jessica Joye. If you have questions about the information in this document, you may reach me at 503-986-0814 or Jessica.L.Joye@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>