



Oregon
Kate Brown, Governor

Water Resources Department
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January 17, 2018

MICHAEL & ARDELE OBRIST
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GRESHAM, OR 97080
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SUBJECT: Water Right Transfer Application T-12623

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12623. 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 Times Journal 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 541-278-5456 or Ken.D.Dowden@wrd.state.or.us if I may be of assistance.

Sincerely,

Ken Dowden
Transfer Specialist
Transfer and Conservation Section

Enclosure

cc: T-12623
Kenneth C. Thiemann, District 21 Watermaster (via e-mail)
Molly Reid, Agent for the applicant (via e-mail at mreid@eaest.com)

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12623, Wheeler County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINTS 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

MICHAEL AND ARDELE OBRIST
17231 SE MCKINLEY ROAD
GRESHAM, OR 97080

Agent

MOLLY REID
EA ENGINEERING, SCIENCE & TECH., INC.
8019 W. QUINULT AVENUE, SUITE 201
KENNEWICK, WA 99336

Findings of Fact

1. On March 27, 2017, Michael and Ardele Obrist filed an application to change the points of diversion under Certificates 26836, 36702 and 25477. The Department assigned the application number T-12623.
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 November 30, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12623 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 30, 2017, for the applicant to respond.
4. On December 5, 2017, the agent for the applicant requested additional time for completion of the transfer to be extended to October 1, 2024, to guarantee adequate time to complete the project. The Department approved the additional time for completion of the transfer to be extended to October 1, 2024, to make full beneficial use of water under the terms and conditions of this 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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5. On December 19, 2017, 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.

6. The first right to be transferred is as follows:

Certificate: 26836 in the name of V.W. and GLENDORA R. YOUNG (perfected under Permit S-19090)
Use: IRRIGATION of 2.8 ACRES
Priority Date: JANUARY 17, 1950
Rate: 0.02 CUBIC FOOT PER SECOND (cfs)
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-FORTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: ROWE CREEK, a tributary to the JOHN DAY RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q
9 S	21 E	WM	28	SE SE

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q - Q	Acres
9 S	21 E	WM	28	NW SE	0.8
9 S	21 E	WM	28	SE SE	2.0

7. Certificate 26836 does not specify the measured distances of the point of diversion. Information from the Certified Water Right Examiner indicates the point of diversion is located:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
9 S	21 E	WM	28	SE SE	1250 FEET NORTH AND 180 FEET WEST FROM THE SE CORNER OF SECTION 28

8. Transfer Application T-12623 proposes to change the point of diversion of the above described right downstream approximately 1250 feet to a diversion structure on the John Day River located:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
9 S	21 E	WM	28	SE SE	JOHN DAY RIVER POD #2: 170 FEET NORTH AND 390 FEET WEST FROM THE SE CORNER OF SECTION 28

9. The second right to be transferred is as follows:

Certificate: 36702 in the name of ROWE CREEK RANCH, INC. (perfected under Permit S-28867)
Use: IRRIGATION of 63.3 ACRES
Priority Date: JULY 2, 1963
Rate: 1.0 cfs

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 5.0 acre-feet per acre for each acre irrigated during the irrigation season of each year; provided further that the right to use of water is limited to the period when the flow of the John Day River is more than 20 cfs at USGS Gage No. 14-0480. (*McDonald Ferry*)

Source: JOHN DAY RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
9 S	21 E	WM	27	SE SW	1000 FEET WEST AND 260 FEET NORTH FROM THE SOUTH CORNER OF SECTION 27

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q - Q	Acres
9 S	21 E	WM	27	NE SW	10.8
9 S	21 E	WM	27	NW SW	1.1
9 S	21 E	WM	27	SW SW	18.1
9 S	21 E	WM	27	SE SW	32.7
9 S	21 E	WM	28	SE SE	0.6
TOTAL:					63.3

10. Transfer Application T-12623 proposes to change the point of diversion of the above described right downstream a quarter mile to a diversion structure located:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
9 S	21 E	WM	28	SE SE	JOHN DAY RIVER POD #2: 170 FEET NORTH AND 390 FEET WEST FROM THE SE CORNER OF SECTION 28

11. The third right to be transferred is as follows:

Certificate: 25477 in the name of E. F. LOOMIS (confirmed by John Day River Decree, Volume 15, Page 461)

Use: IRRIGATION of 63.8 ACRES

Priority Date: 1882

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE-FORTIETH of one cfs per acre irrigated to June 1 and ONE-EIGHTIETH of one cfs per acre thereafter; further limited to ONE acre-foot per calendar month to June 1 and FOUR acre-feet per acre during the irrigation season April 1 to September 30, measured at the point of diversion.

Source: ROWE CREEK, tributary to the JOHN DAY RIVER

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q - Q	Acres
9 S	21 E	WM	27	NW NW	0.4
9 S	21 E	WM	27	SW NW	18.6
9 S	21 E	WM	27	NW SW	22.4
9 S	21 E	WM	27	SW SW	2.5

Twp	Rng	Mer	Sec	Q - Q	Acres
9 S	21 E	WM	28	SE NE	2.8
9 S	21 E	WM	28	NE SE	0.5
9 S	21 E	WM	28	SW SE	1.0
9 S	21 E	WM	28	SE SE	15.6
TOTAL:					63.8

12. Certificate 25477 does not describe the point of diversion. However, information is available from the applicant and Certified Water Right Examiner indicating that the point of diversion is more accurately described as follows:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
9 S	21 E	WM	27	NW NW	840 FEET SOUTH AND 310 FEET EAST FROM THE NW CORNER OF SECTION 27

13. Transfer Application T-12623 proposes to change the point of diversion downstream approximately 5000 feet to a diversion structure on the John Day River located:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
9 S	21 E	WM	28	SE SE	JOHN DAY RIVER POD#2- 170 FEET NORTH AND 390 FEET WEST FROM THE SE CORNER OF SECTION 28

14. Certificates 26836 and 36702 do not describe the irrigation season. However, information is available from the John Day Decree indicating the irrigation season is April 1 to September 30.
15. 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.
16. Transfer Application T-12623 proposes to change the points of diversion under Certificates 26836 and 25477 downstream on Rowe Creek to the proposed diversion on the John Day River. To prevent enlargement, the Department requires the water user to limit the appropriation of water (under Certificates 26836 and 25477) at the new proposed diversion structure (John Day River POD #2) to what is available in Rowe Creek. The Department has determined that continuous measurement devices be installed in Rowe Creek near the confluence with the John Day River and at the authorized point of diversion on Rowe Creek (NW¼ NW¼ of Section 27). The sites and measurement devices shall be approved by the Watermaster prior to installation and installed under the direct supervision of the Watermaster.
17. The measurement devices will be installed and maintained to measure the available flow from Rowe Creek that can be diverted at the new proposed John Day River diversion within the limitations of the listed water rights. The continuous measurement devices at the authorized POD and/or the mouth of Rowe Creek may be downgraded to one that just measures instantaneous flow when in the judgement of the Watermaster the data justifies the downgrade. Any confirming right certificates shall require the continued use and maintenance of these measurement devices.

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

18. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
19. Diversion structures and ditches 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-12623.
20. The proposed changes would not result in enlargement of the rights if conditioned as set forth in Findings of Fact #16 and #17 requiring continuous measurement devices be installed on Rowe Creek to measure the available flow at the former authorized point of diversion located in Section 27 and the new proposed point of diversion on the John Day River.
21. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

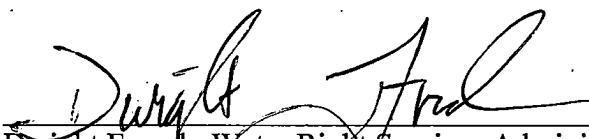
The changes in points of diversion proposed in Transfer Application T-12623 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-12623 is approved, the final order will include the following:

1. *The changes in points of diversion proposed in Transfer Application T-12623 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 26836, 36702, 25477, and any related decree.*
3. *Water right Certificate 26836, 36702, and 25477 are 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 points of diversion or at the mouth, whichever is less. In order to prevent enlargement, the Department requires the water user to limit the appropriation of water at the new proposed diversion structure (John Day River POD #2) to what is available in Rowe 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 the new point of diversion. The water user shall install approved continuous measuring devices at the original point of diversion on Rowe Creek (T9S, R21E, NW¼ NW¼ of Section 27) and at the mouth of Rowe Creek.*
 - b. *The continuous measuring devices may be downgraded to one that just measures instantaneous flow when in the judgment of the Watermaster data suggests the downgrade.*

- c. *The water user shall maintain the meter(s) or measuring device(s) in good working order.*
 - d. *The water user shall allow the Watermaster access to the meter(s) or measuring device(s); provided however, where the meter(s) or measuring device(s) is/are located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the 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.
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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.*
8. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 17th day of January, 2018.


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

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@oregon.gov.

Protests should be addressed to the attention of Transfer and Conservation Section, 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>