

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12739, Lane County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN SURFACE WATER
	)	POINTS OF DIVERSION TO
	)	GROUNDWATER POINTS OF
	)	APPROPRIATION, A CHANGE IN
	)	PLACE OF USE, A CHANGE IN
	)	CHARACTER OF USE, AND A
	)	PARTIAL CANCELLATION OF A
	)	WATER RIGHT

Authority

Oregon Revised Statutes (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

RAINBOW WATER DISTRICT
ATTN: JAMIE PORTER
PO BOX 8
SPRINGFIELD, OR 97477

Findings of Fact

1. On September 8, 2017, RAINBOW WATER DISTRICT, ATTN: JAMIE PORTER, filed an application to change from a surface water point of diversion to groundwater points of appropriation and to change the place of use, and character of use under Certificate 57754. The Department assigned the application number T-12739.
2. Notice of the application for transfer was published on September 12, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

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.

3. On December 1, 2017, the Department sent a deficiency letter to the applicant's agent addressing a few discrepancies found in the application.
4. On December 4, 2017, the Department sent a revised deficiency letter to the applicant's agent requesting clarification on the distance from the proposed points of appropriation to the surface water source and the authorized points of appropriation.
5. On December 8, 2017, the Applicant's agent submitted a revised Table 1 and 2 of the application and a revised map clarifying the items addressed in the deficiency letters sent by the Department on December 1, 2017 and December 4, 2017.
6. On January 11, 2018, the Applicant's agent submitted a revised Table 1 and 2 of the application and a revised map.
7. On January 12, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12739 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 12, 2018, 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.
8. The portion of the right to be transferred is as follows:

Certificate: 57754 in the name of RODNEY W. AND CHESTER A. CHASE
(perfected under Permit S-41902)

Use: IRRIGATION of 21.3 ACRES

Priority Date: MAY 6, 1977

Rate: 0.27 CUBIC FOOT 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 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: MCKENZIE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
17 S	3 W	WM	23	NW SE	50	1580 FEET NORTH AND 2000 FEET EAST FROM THE SE CORNER OF DLC 46

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
17 S	3 W	WM	23	NE SE	50	8.0
17 S	3 W	WM	23	NW SE	50	7.5
17 S	3 W	WM	23	SW SE	50	1.3
17 S	3 W	WM	23	SE SE	50	4.5
Total						21.3

9. The Applicant's Certified Water Right Examiner provided a different measured distance indicating that the authorized point of diversion under Certificate 57754 is more accurately described as being located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
17 S	3 W	WM	23	NW SE	50	POD – 1790 FEET NORTH AND 2090 FEET WEST FROM THE SE CORNER OF SECTION 23

10. Transfer Application T-12739 proposes to change from a surface water point of diversion to hydraulically connected groundwater points of appropriation for the lands described in Finding of Fact #6, located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Distance from authorized POD location measured in feet (ft)
17 S	3 W	WM	23	NE SE	50	CHASE WELL 2 - 2070 FEET NORTH AND 1190 FEET WEST FROM THE SE CORNER OF SECTION 23	960
17 S	3 W	WM	23	NE SE	50	CHASE WELL 7 - 1640 FEET NORTH AND 1150 FEET WEST FROM THE SE CORNER OF SECTION 23	960
17 S	3 W	WM	23	NW SE	50	CHASE WELL 6 - 1650 FEET NORTH AND 1590 FEET WEST FROM THE SE CORNER OF SECTION 23	520

11. Certificate 57754 does not specify the irrigation season. However, the Willamette Basin Program established the irrigation season for the area as March 1 through October 31. Therefore, consistent with OAR 690-502, the irrigation season for this application is March 1 through October 31.

12. Transfer Application T-12739 proposes to change the character of use to municipal use. The use will be limited to the irrigation season of March 1 through October 31.

13. Transfer Application T-12739 proposes to change the place of use of the right to:

MUNICIPAL USE
WITHIN THE RAINBOW WATER DISTRICT SERVICE AREA

14. The total volume of water that may be diverted annually for municipal uses is 53.25 acre-feet ($2.5 \times 21.3 = 53.25$ acre-feet) during the irrigation season of March 1 through October 31.

Transfer Review Criteria (OAR 690-380-4010)

15. 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.
16. A pump, pipeline, and sprinkler system 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-12739.

17. The proposed points of appropriation meet the requirements of ORS 540.531 and OAR 690-380-2130(2)(c) and (11)(b).
18. The proposed change, as conditioned, would not result in enlargement of the right.
19. The proposed change would not result in injury to other water rights.
20. All other application requirements are met.

Partial Cancellation of a Water Right

21. On September 8, 2017, the applicant submitted an affidavit meeting the requirements of ORS 540.621 for the partial cancellation of Water Right Certificate 57754. The applicant has abandoned any and all interest in this portion of the water right.
22. The portion of the water right to be cancelled is as follows:

Certificate: 57754 in the name of RODNEY W. AND CHESTER A. CHASE
(perfected under Permit S-41902)

Use: IRRIGATION of 0.2 ACRE

Priority Date: MAY 6, 1977

Rate: 0.003 CUBIC FOOT 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 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: MCKENZIE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
17 S	3 W	WM	23	NW SE	50	1580 FEET NORTH AND 2000 FEET EAST FROM THE SE CORNER OF DLC 46

Authorized Place of Use to be Cancelled:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
17 S	3 W	WM	23	NW SE	50	0.1
17 S	3 W	WM	23	SW SE	50	0.1
Total						0.2

Determination and Proposed Action

The changes from a surface water point of diversion to groundwater points of appropriation and to change the place of use and character of use proposed in Transfer Application T-12739 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned right will be cancelled.

If Transfer Application T-12739 is approved, the final order will include the following:

- 1. The change from a surface water point of diversion to groundwater points of appropriation, and changes in place of use and character of use proposed in Transfer Application T-12739 are approved. The portion of the right that has been abandoned is cancelled.*
- 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 57754 and any related decree.*
- 3. Water right Certificate 57754 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.*
- 4. The quantity of water diverted at the new points of appropriation, shall not exceed the quantity of water lawfully available at the original point of diversion.*
- 5. The wells from which water is taken under the right shall be constructed so that the use of the wells will affect the surface water source similarly to the use of the original authorized point of diversion.*
- 6. The use of water under this right shall be subject to regulation consistent with other water rights from the surface water source and to all other applicable conditions and restrictions that existed at the original point of diversion.*
- 7. If, within five years after approval of the transfer, the Department finds that the transfer results in substantial or undue interference with an existing ground water right due to use of the well, that would not have occurred in the absence of the transfer, the new point of appropriation shall be subordinate to the existing right injured by the transfer.*
- 8. The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion under the transferred portion of the right. However, if within five years after approval of the transfer, the Department receives a transfer application to return to the last authorized surface water point of diversion, the application shall be approved.*
- 9. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
- 10. The former place of use of the transferred right shall no longer receive water under the right.*

11. *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 appropriation.*
 - b. *The water user shall maintain the meters or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
12. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2027**. 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.*
13. *The use of water under the proposed municipal use shall be limited to a rate of diversion of 0.27 cubic foot per second and further limited to a total quantity of water diverted of 53.25 acre-feet during the season of March 1 through October 31.*
14. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon, FEB 26 2018.



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>