

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

In the Matter of Transfer Application T-12808, Morrow County)))	PRELIMINARY DETERMINATION 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

WEST EXTENSION IRRIGATION DISTRICT
PO BOX 100
IRRIGON, OR 97844

Findings of Fact

1. On December 26, 2017, WEST EXTENSION IRRIGATION DISTRICT filed an application for an additional point of diversion under Certificate 87799. The Department assigned the application number T-12808.
2. Notice of the application for transfer was published on January 9, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 19, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12808 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 19, 2018, for the applicant to respond. The applicant did not respond by the deadline.
4. On April 23, 2018, the Department contacted the applicant by written correspondence to notify the applicant and the applicant’s agent the Department was still waiting for the applicant’s response to the draft Preliminary Determination. The Department set forth a deadline of May 25, 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.
5. On July 1, 2018, the applicant submitted a Water Delivery Agreement.

<p>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.</p>

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

Certificate: 87799 in the name of WEST EXTENSION IRRIGATION DISTRICT
(perfected under Permit S-45999)
Use: IRRIGATION of 159.1 ACRES
Priority Date: JUNE 15, 1981
Rate: 3.98 CUBIC FEET 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, 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 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
5 N	26 E	WM	23	SE NE	5	800 FEET NORTH AND 200 FEET WEST FROM THE E1/4 CORNER OF SECTION 23

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	26 E	WM	4	SW NW	0.2
4 N	26 E	WM	4	SE NW	4.7
4 N	26 E	WM	4	NE SW	24.8
4 N	26 E	WM	4	NW SW	29.7
4 N	26 E	WM	4	SW SW	3.4
4 N	26 E	WM	4	SE SW	39.4
4 N	26 E	WM	4	NW SE	2.8
4 N	26 E	WM	4	SW SE	26.6
4 N	26 E	WM	5	NE SE	0.7
4 N	26 E	WM	9	NW NE	9.4
4 N	26 E	WM	9	NE NW	17.3
4 N	26 E	WM	9	NW NW	0.1
Total					159.1

7. Transfer Application T-12808 proposes an additional point of diversion approximately 9.2 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
5 N	25 E	WM	35	SW SE	3	80 FEET NORTH AND 2480 FEET WEST FROM THE SE CORNER OF SECTION 35

8. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is currently equipped with an appropriate fish screening and/or by-pass device.

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

9. 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.
10. A pump, pipeline, and canal system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-12808.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

Determination and Proposed Action

The additional point of diversion proposed in Transfer Application T-12808 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-12808 is approved, the final order will include the following:

1. *The additional point of diversion proposed in Transfer Application T-12808 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 87799 and any related decree.*
3. *Water right Certificate 87799 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
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. *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 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.*

6. *The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.*
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 SEP 20 2018.



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

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or corey.a.courchane@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>



Oregon

Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

September 20, 2018

WEST EXTENSION IRRIGATION DISTRICT
PO BOX 100
IRRIGON, OR 97844

SUBJECT: Water Right Transfer Application T-12808

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12808. 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 Hermiston 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 corey.a.courchane@oregon.gov or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-12808
Gregory M. Silbernagel, District 5 Watermaster (*via e-mail*)
Molly Reid, Agent for the applicant (*via e-mail*)

encs