

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12579, Jackson County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE AND
)	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

JESSE STRICKLER
2802 OAKRIDGE AVE
CENTRAL POINT, OR 97502

Findings of Fact

1. On January 26, 2017, JESSE STRICKLER filed an application to change the place of use and to change the character of use under Certificate 12020. The Department assigned the application number T-12579.
2. Notice of the application for transfer was published on January 31, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 18, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12579 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 19, 2018, for the applicant to respond.
4. On July 3, 2018, the applicant contacted the Department regarding concerns relating to the limitation placed on the total annual volume allowed per year. The applicant believes the limitation of 0.47 Acre Feet (AF) per year should be increased to 0.94 AF per year as the original right identified two households, and that the right should have also included ½ acre

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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of non-commercial lawn and garden. The applicant believes this would have added 4.5 AF of allowable use of water to the limitation.

5. On July 16, 2018, the Department found a reference in an Application for Extension of Time that was submitted to the Department on March 9, 1937. The reference stated, "This is our sole water supply at both houses and for a small garden." Based on this information, the Department has determined irrigation for ½ acre of non-commercial lawn and garden would be allowable.
6. On August 2, 2018, the Department mailed a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-12579 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 31, 2018, for the applicant to respond.
7. On August 21, 2018, the applicant requested to extend the deadline for a response to September 15, 2018. No response was received to the letter.
8. On September 19, 2018, the Department contacted the applicant by written correspondence to notify the applicant the Department still had not received the requested materials, in order to proceed with issuance of an approved Preliminary Determination. The Department requested that the requested materials be received by October 18, 2018.
9. On October 18, 2018, 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.
10. The right to be transferred is as follows:

Certificate: 12020 in the name of VIVIAN ONN and CLYDE ONN (perfected under Permit S-11209)
Use: DOMESTIC
Priority Date: FEBRUARY 23, 1934
Rate: 0.01 CUBIC FOOT PER SECOND
Source: UNNAMED SPRING, a tributary of WEST FORK TRAIL CREEK, a tributary of TRAIL CREEK, a tributary of ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
33 S	1 W	WM	19	NE NW

Authorized Place of Use:

DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
33 S	1 W	WM	19	NE NW
33 S	1 W	WM	19	NW NW

11. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 12020 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	1 W	WM	19	NE NW	1096 FEET SOUTH AND 1844 FEET EAST FROM THE NW CORNER OF SECTION 19

12. Transfer Application T-12579 proposes to change the character of use to nursery.
13. Transfer Application T-12579 also proposes to change the place of use of the right to:

NURSERY					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	1 W	WM	19	NW NE	2.50
33 S	1 W	WM	19	NE NW	2.70
33 S	1 W	WM	19	NW NW	0.18
Total					5.38

14. Certificate 12020 does not specify a period of allowed use; however, domestic use is generally considered a year-round use. However, irrigation of the ½ acre of lawn and garden would be limited to the irrigation season. Certificate 12020 does not specify the irrigation season, nor is an irrigation season specified by Basin Program or Decree. Consistent with OAR 690-250-0070(1), the irrigation season is March 1 through October 31.
15. Certificate 12020 does not specify a total quantity of water to be diverted annually for domestic use; however, ORS 540.610 states “beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state.” If the domestic use was diverted continuously at the authorized rate of 0.01 cfs for 365 days per year (0.01 cfs x 60 sec/min x 60 min/hr x 24 hr/day x 365 days/year ÷ 43,560 square feet per acre = 7.24 acre-feet per year), is the maximum that could have been diverted. However, water for domestic use is not continuously diverted for 24 hours per day, 365 days per year.
16. Use of more water per year than what could have been used for maximum beneficial use for the original domestic use would constitute enlargement of the right, which is not allowed. Therefore, to avoid enlarging the right under the proposed nursery use, an annual volume limit should be added to the right based on the best available estimate of the maximum amount of water that could have been beneficially diverted and used for domestic use during a year.
17. Estimates of in-house domestic use available from agencies such as the United States Geological Survey (USGS), American Water Works Association (AWWA) and Penn State Cooperative Extension indicate an average in-house domestic water use of approximately 70 gallons per person per day, or approximately 0.47 acre-feet per year for a household that includes six people. Therefore, the annual volume limitation to be placed on the domestic use for this right is 0.94 acre-feet per year (0.47 acre-feet per year x 2 households = 0.94 acre feet per year).
18. The total volume of water that may be diverted for domestic use plus ½ acre of lawn and garden, as conditioned, is 3.19 AF (0.94 acre-feet per year + 2.25 AF for ½ acre of lawn and garden) March 1 through October 31.

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

19. 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.
20. A diversion structure, pipeline, and holding tank 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-12579.
21. The proposed changes, as conditioned, would not result in enlargement of the right.
22. The proposed changes, as conditioned, would not result in injury to other water rights.
23. All other application requirements are met.

Determination and Proposed Action

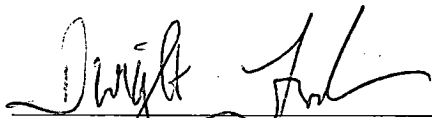
The change in place of use and change in character of use proposed in Transfer Application T-12579 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-12579 is approved, the final order will include the following:

1. *The change in place of use and change in character of use proposed in Transfer Application T-12579 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 12020 and any related decree.*
3. *Water right Certificate 12020 is cancelled.*
4. *The rate of diversion for the proposed nursery use shall be limited to 0.01 cubic foot per second and shall be further limited to a total quantity of 3.19 acre feet during the entire year.*
5. *The proposed nursery use shall be further limited such that:*
 - a) *The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.01 cubic foot per second per acre and $(3.19 \text{ af} \div 5.38 \text{ acres}) = 0.59 \text{ acre feet per acre per year}$ during the irrigation season, further limited to 0.01 cubic foot per second per acre and $(0.94 \text{ af} \div 5.38 \text{ acres}) = 0.17 \text{ acre feet per acre per year}$ outside the irrigation season.*
 - b) *For the irrigation of containerized nursery plants, the amount of water diverted is limited to 0.01 cubic foot per second (or its equivalent) and 0.17 acre feet per acre per year.*

- c) *For the irrigation of in-ground nursery plants, the amount of water diverted is limited to 0.01 cubic foot per second (or its equivalent) and 0.17 acre feet per acre per year.*
 - d) *For the irrigation of any other crop, the amount of water diverted is limited to 0.01 cubic foot per second (or its equivalent) and 2.5 acre feet per acre during the irrigation season of each year. The use of water for irrigation of any other crop shall be limited to 5.38 acres.*
6. *Water use measurement conditions:*
- a. *Before water use may begin under this order, the water user shall install a flow restrictor or meter, or, with prior approval of the Director, another suitable measuring device, at each 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.*
7. *The former place of use of the transferred right shall no longer receive water under the right.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this NOV 13 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

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Fax (503) 986-0904

November 13, 2018

JESSE STRICKLER
2802 OAKRIDGE AVE
CENTRAL POINT, OR 97502

SUBJECT: Water Right Transfer Application T-12579

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12579. 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 Mail Tribune 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-12579
Shavon L. Haynes, District 13 Watermaster (via e-mail)

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