

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12793, Linn County)	PROPOSING APPROVAL OF A
)	CHANGE FROM A SURFACE WATER
)	POINT OF DIVERSION TO A
)	GROUNDWATER POINT OF
)	APPROPRIATION

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

WILLIAM RADKE
PO BOX 15
SHEDD, OR 97377

Findings of Fact

1. On December 18, 2017, WILLIAM RADKE filed an application to change from a surface water point of diversion to a groundwater point of appropriation under Certificate 30011. The Department assigned the application number T-12793.
2. Notice of the application for transfer was published on December 26, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 25, 2019, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of the deficiencies in the application. The Department requested that the deficiencies be resolved by February 25, 2019.
4. On February 4, 2019, the applicant submitted an Evidence of Use affidavit with supporting documentation, and a revised Table 1, resolving the deficiencies.

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.

5. On February 14, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-12793 to the applicant, for failure to meet the requirements of ORS 540.531(2)(C)(D)(b) and OAR 690-380-2130(2)(c)(d)(e). The draft Preliminary Determination cover letter set forth a deadline of March 15, 2019, for the applicant to respond.
6. On March 8, 2019, the applicant's agent submitted a revised application and map, removing proposed Well 1 from the application. 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.
7. On April 15, 2019, the applicant requested to extend the completion date to October 1, 2025.
8. The right to be transferred is as follows:

Certificate: 30011 in the name of ALBERT L. and BETH GREGORY (perfected under Permit S-26638)

Use: IRRIGATION of 47.9 ACRES

Priority Date: MARCH 8, 1960

Rate: 0.45 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: OWL CREEK, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
11 S	4 W	WM	31	SW NE	2	NONE GIVEN

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
11 S	4 W	WM	31	NW NE		87	0.4
11 S	4 W	WM	31	SW NE	2		0.2
11 S	4 W	WM	31	SW NE		87	14.6
11 S	4 W	WM	31	NE NW		87	0.7
11 S	4 W	WM	31	SE NW		87	30.5
11 S	4 W	WM	31	NE SW		87	1.2
11 S	4 W	WM	31	NW SE		87	0.3
						Total	47.9

9. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 30011 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
11 S	4 W	WM	31	SW NE	NORTH 3 DEGREES EAST 800 FEET FROM THE SW CORNER OF WILLIAM HITE DLC 71

10. Transfer Application T-12793 proposes to change from a surface water point of diversion to a groundwater point of appropriation (well) as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
11 S	4 W	WM	31	NW NE	87	WELL #4 - 2891 FEET NORTH AND 14 FEET EAST FROM THE SE CORNER OF CHARLES MULKEY DLC 87
11 S	4 W	WM	31	SW NE	87	WELL #2 - 2073 FEET NORTH AND 77 FEET EAST FROM THE SE CORNER OF CHARLES MULKEY DLC 87
11 S	4 W	WM	31	SW NE	87	WELL #3 - 2595 FEET NORTH AND 18 FEET EAST FROM THE SE CORNER OF CHARLES MULKEY DLC 87

11. Approximate distance from the original surface water point of diversion to the groundwater points of appropriation in feet (ft.):

Well	Approximate Distance
#4	520.9 ft. Northwest
#2	309.7 ft. Southwest
#3	235.8 ft. Northwest

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

12. 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.
13. A pump, hose reel, 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-12793.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.
16. All other application requirements are met.

Determination and Proposed Action

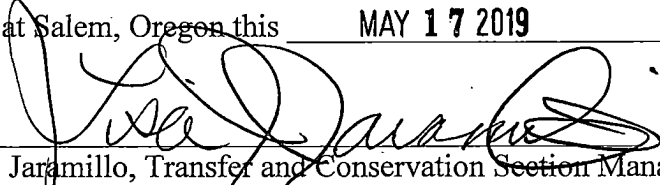
The change from a surface water point of diversion to groundwater points of appropriation proposed in Transfer Application T-12793 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-12793 is approved, the final order will include the following:

1. *The change from a surface water point of diversion to groundwater points of appropriation proposed in Transfer Application T-12793 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 30011 and any related decree.*
3. *Water right Certificate 30011 is cancelled.*
4. *The quantity of water diverted at the new points of appropriation (Well #2, #3, or #4), shall not exceed the quantity of water lawfully available at the original point of diversion (Owl 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 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.*
6. *All applicable restrictions that existed at the original point of diversion shall apply to the proposed well.*
7. *The original date of priority shall be retained. However, if within five years after approving the transfer, the Department finds that the transfer results in substantial interference with existing groundwater rights that would not have occurred in the absence of the transfer, the proposed well shall be subordinate to any existing right injured by the transferred water right.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2025**. 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.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this MAY 17 2019 ,



Lisa J. Jaramillo, Transfer and Conservation Section Manager, 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

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May 17, 2019

WILLIAM RADKE
PO BOX 15
SHEDD, OR 97377

SUBJECT: Water Right Transfer Application T-12793

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12793. 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 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-12793
Lanaya F. Blakely, District 2 Watermaster (via e-mail)
John McGee, Agent for the applicant (via e-mail)

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