



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

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November 4, 2020

ELDER RANCH, INC.
757 JUNTURA-RIVERSIDE RD.
RIVERSIDE, OR 97917

SUBJECT: Water Right Transfer Application T-11391

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11391. 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 Malheur Enterprise 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.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Please do not hesitate to contact me, at corey.a.courchane@oregon.gov or (503) 986-0825, if I may be of assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Corey Courchane". The signature is fluid and cursive, with a long horizontal stroke at the end.

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-11391
Jered L. Hoshaw, District 9 Watermaster (*via e-mail*)
Pat Woodcock, Agent for the applicant (*via e-mail*)

encs

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11391, Malheur County)	PROPOSING APPROVAL OF
)	CHANGES IN PLACE OF USE AND
)	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

ELDER RANCH, INC.
757 JUNTURA-RIVERSIDE RD.
RIVERSIDE, OR 97917

Agent

PAT J. WOODCOCK
ENGINEERING NORTHWEST
372 SW 1ST AVENUE
ONTARIO, OR 97914

Findings of Fact

1. On April 2, 2012, Sam McDaniel filed an application to change the place of use and add additional points of diversion under Certificates 6863 and 52073. The Department assigned the application number T-11391.
2. Notice of the application for transfer was published on April 10, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 5, 2013, the Department notified the agent for the applicant of deficiencies in the application and map. On November 13, 2013, the Department contacted the new land owners Rob and Kristi Elder about the process to transfer the application into their names.
4. On July 2, 2019, the Department notified the agent for the applicant by e-mail of the several deficiencies in the application that continue to prevent the Department from moving forward with their review. The e-mail provided an opportunity to submit these items and bring the application to a "complete" status, consistent with OAR 690-380-3000.

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 July 3, 2019, the Department notified the agent for the applicant by e-mail that the new owners should submit a completed, notarized assignment to transfer the interest of the transfer application to the new owners.
6. On August 20, 2019, the Department sent out an e-mail outlining a complete list of the several deficiencies that need to be addressed.
7. On September 17, 2019, the Department sent out an e-mail outlining a complete list of the several deficiencies that need to be addressed.
8. On October 17, 2019, Department sent out another e-mail to follow up on progress being made on this file. On October 25, 2019, the agent for the applicant requested another 90 days to address the mapping problems and submit an assignment form to update the ownership. The Department granted until January 25, 2020, in which to submit the items.
9. On January 29, 2020, the Department notified the agent for the applicant that the 90 day extension time period had expired and nothing had been received. On February 19, 2020, the agent for the applicant again requested another 30 days to address the mapping problems and submit an assignment form to update the ownership. The Department granted the 30-day extension until March 19, 2020, to get the last items submitted and assignment to the new landowners completed.
10. On March 18, 2020, the agent for the applicant submitted new revised application pages and an associated map, meeting the minimum required information for a complete application consistent with OAR 690-380-3000. The amended application also dropped changes to Certificate 52073.
11. On April 8, 2020, consistent with OAR 690-380-5130, the Department approved the assignment and interest in Transfer Application T-11391 to Elder Ranch, Inc.
12. On June 3, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11391 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 3, 2020, 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.
13. The portion of the right to be transferred is as follows:
 - Certificate:** 6863 in the name of W. L. BLAYLOCK (confirmed by Malheur River)
 - Use:** IRRIGATION of 55.5 ACRES
 - Priority Date:** SEPTEMBER 1887
 - Limit/Duty:** The amount of water to which such right is entitled, for the purpose of irrigation, is limited to an amount of water actually beneficially used for said purposes, and shall not exceed 1½ acre feet per acre in any 30-day period prior to June 1st, 1.0 acre foot per acre in any 30-day period after June 1st, of each year, or 3.0 acre-feet per acre during any season, diverted

at a rate not to exceed ONE-TWENTIETH of one cubic foot per second per acre.

Source: MIDDLE FORK of MALHEUR RIVER

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Acres	Proposed change
23 S	37 E	WM	21	NE SE	4.0	POU
23 S	37 E	WM	21	NE SE	8.5	POU/APOD
23 S	37 E	WM	21	NE SE	2.0	APOD
23 S	37 E	WM	21	NW SE	8.0	POU
23 S	37 E	WM	22	NW SW	7.0	APOD
23 S	37 E	WM	22	NW SW	23.0	POU
23 S	37 E	WM	22	SW SW	3.0	APOD
Total					55.5	

14. Certificate 6863 does not describe the location of the point of diversion, however, based on information in the Malheur River Decree, the Department's adjudication map and the current map prepared by the applicant's Certified Water Rights Examiner based on a recent field visit and subsequent survey indicating that the point of diversion on the Malheur River are located as follows:

Twp	Rng	Mer	Sec	Q - Q	Ditch
23 S	37 E	WM	20	NE NE	FAIRMAN BLAYLOCK DITCH (POD #1) - 4530 FEET NORTH AND 6550 FEET WEST FROM THE SE CORNER OF SECTION 21

15. Transfer Application T-11391 proposes to add an additional point of diversion for the above described 20.5 acres downstream approximately 7800 feet from POD #1 on the Malheur River located to:

Twp	Rng	Mer	Sec	Q - Q	Diversion from Source
23 S	37 E	WM	21	SW SE	POD #2 - 850 FEET NORTH AND 1850 FEET WEST FROM THE SE CORNER OF SECTION 21

16. Transfer Application T-11391 also proposes to change the place of use of the above described 43.5 acres to the following locations:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Acres	POD
23 S	37 E	WM	21	NE SE	16.5	1
23 S	37 E	WM	21	NW SE	1.0	2
23 S	37 E	WM	21	NW SE	18.5	1
23 S	37 E	WM	21	SW SE	4.5	2
23 S	37 E	WM	21	SE SE	1.5	2
23 S	37 E	WM	22	SW SW	1.5	2
Total					43.5	

17. 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. Listed fish species are not present at the point of diversion, the originating water right diversion is not screened, cost-share funds are not currently available, and the proposed diversion may be eligible for

ODFW's cost-share program. A grace period of two years is appropriate until such time as cost-share funds become available to assist in the construction of a fish screen. If cost-share funds do not become available, the water user must screen within the indicated time period regardless of the availability of cost-share funding.

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

18. Water has been used within the five-year period prior to submittal of the transfer application 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.
19. A diversion structure and ditch 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-11391.
20. The proposed changes would not result in enlargement of the right.
21. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The changes in place of use and additional point of diversion proposed in Transfer Application T-11391 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-11391 is approved, the final order will include the following:

1. *The changes in place of use and additional point of diversion proposed in Transfer Application T-11391 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 Certificate 6863 and any related decree.*
3. *Water right Certificate 6863 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The former place of use of the transferred right shall no longer receive water under the right.*
5. *The quantity of water diverted at the new additional point of diversion (POD #2), together with that diverted at the original point of diversion (POD #1), shall not exceed the quantity of water lawfully available at the original point of diversion (POD #1).*

6. *Water use measurement conditions:*
 - a. *When in the future, the Department may require the water user to 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 may be required to maintain the meter(s) or measuring device(s) in good working order.*
 - c. *The water user may be required to 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.*
7. *By October 1, 2022, the water user shall install an approved fish screen at the new point of diversion. The water user may withdraw water at the new point of diversion without a screen until October 1, 2022. The water user shall provide to 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 maintain and operate 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.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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.*

NOV 04 2020

Dated at Salem, Oregon this _____,


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Ken Dowden. T-11391 has been assigned to 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.

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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>