

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13483, Josephine County)	PROPOSING APPROVAL OF
)	CHANGES IN POINTS 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

CHRISTIAN HOUDE
FLOWERS OF THE SUN, LLC
234 BROWNS RD
WILLIAMS, OR 97544

Findings of Fact

1. On June 30, 2020, CHRISTIAN HOUDE, FLOWERS OF THE SUN, LLC filed an application to change the points of diversion under Certificates 3353 and 16317. The Department assigned the application number T-13483.
2. Notice of the application for transfer was published on July 14, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 3, 2020, the Department requested a field investigation be conducted to locate the Caldwell Ditch diversion point on East Fork Williams Creek and the point where water was diverted from West Fork Williams Creek into the Caldwell Ditch.
4. On November 10, 2020, the applicant's agent provided information including Lidar and aerial photographs showing the measured distances of the original points of diversion for Certificate 16317.
5. On November 16, 2020, the watermaster provided a new watermaster review in light of the documentation received from the agent defining the location of the original points of diversion for Certificate 16317.

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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6. On January 30, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13483 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 1, 2021, 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.
7. The portion of the first right to be transferred is as follows:

Certificate: 3353 in the name of JOHN VAN ZANT; C/O M.L. OPDYCKE (perfected under Permit S-2772)
Use: IRRIGATION of 12.62 ACRES
Priority Date: DECEMBER 28, 1915
Rate: 0.16 CUBIC FOOT PER SECOND
Source: EAST FORK WILLIAMS CREEK, tributary of APPLGATE RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	5 W	WM	35	SW SW	12.62

8. Certificate 3353 does not describe the measured distance of the point of diversion, however information is available from the applicant, indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	5 W	WM	14	SE NW	EASTSIDE DITCH – 2400 FEET SOUTH AND 1900 FEET EAST FROM THE NW CORNER OF SECTION 14

9. Transfer Application T-13483 proposes to move the authorized point of diversion downstream approximately 3.38 miles (mi.) to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	5 W	WM	35	SW SW	FLOWERS PUMP – 800 FEET NORTH AND 430 FEET EAST FROM THE SW CORNER OF SECTION 35

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

Certificate: 16317 in the name of C.E. ROSE (confirmed by Rogue River Final Decree, Volume 4, Page 1)
Use: IRRIGATION of 0.8 ACRE
Priority Date: 1878
Rate: 0.02 CUBIC FOOT PER SECOND
Source: EAST AND WEST FORKS OF WILLIAMS CREEK

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	5 W	WM	35	SW SW	0.8

11. Certificate 16317 does not describe the measured distance of the points of diversion, however information is available from the applicant's agent, indicating that the points of diversion are located as follows:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Measured Distance
39 S	5 W	WM	3	NE NE	CALDWELL DITCH WEST FORK – 940 FEET SOUTH AND 1330 FEET WEST FROM THE NE CORNER OF SECTION 3
39 S	5 W	WM	3	NE NE	CALDWELL DITCH EAST FORK – 800 FEET SOUTH AND 1185 FEET WEST FROM THE NE CORNER OF SECTION 3

12. Transfer Application T-13483 proposes to move the authorized point of diversion downstream approximately 3.38 miles (mi.) to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	5 W	WM	35	SW SW	FLOWERS PUMP – 800 FEET NORTH AND 430 FEET EAST FROM THE SW CORNER OF SECTION 35

12. 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. This diversion may be eligible for screening cost-share funds

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

13. 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 rights are subject to forfeiture under ORS 540.610.
14. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-13483.
15. The proposed change would not result in enlargement of the rights.
16. The proposed changes would not result in injury to other water rights.
17. All other application requirements are met.

Determination and Proposed Action

The change in points of diversion proposed in Transfer Application T-13483 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-13483 is approved, the final order will include the following:

1. *The change in points of diversion proposed in Transfer Application T-13483 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 Certificates 3353, 16317, and any related decree.*
3. *Water right Certificates 3353 and 16317 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
4. *For Certificate 3353, the quantity of water diverted at the new point of diversion (Flowers Pump) shall not exceed the quantity of water lawfully available at the original point of diversion (Eastside Ditch).*
5. *For Certificate 16317, the quantity of water diverted at the new point of diversion (Flowers Pump) shall not exceed the quantity of water lawfully available at the original points of diversion (Caldwell Ditch East and West Fork).*
6. *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, with the exception that water rights issued to the Bureau of Reclamation or an irrigation district (or similar entity) are not subject to this condition.*
 - 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. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the 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.*
8. *The water user shall operate and maintain 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.*
9. *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.*

10. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

APR 01 2021

Dated in Salem, Oregon on _____



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

This Preliminary Determination was prepared by: Tamera Smith. If you have any questions about the information in this document, you may reach me at 503-986-0864 or tamera.l.smith@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.

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.

Notice Regarding Service Members: Active duty service members have a right to stay these proceedings under the federal service members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

APRIL 1, 2021

CHRISTIAN HOUDE
FLOWERS OF THE SUN, LLC
234 BROWNS ROAD
WILLIAMS, OR 97544

SUBJECT: Water Right Transfer Application T-13483

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13483. 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 Grants Pass Daily Courier 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 503-986-0886 or Patrick.K.Starnes@ wrd.state.or.us if I may be of assistance.

Kindest regards,

Tamera Smith
Transfer Caseworker
Transfer and Conservation Section

cc: Transfer application file T-13483
Scott C. Ceciliani, District 14 Watermaster *(via e-mail)*
Richard F. Parsons, Agent for the applicant *(via e-mail)*

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