

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

In the Matter of Transfer Application                    )     PRELIMINARY DETERMINATION  
T-10173, Benton County                                    )     PROPOSING APPROVAL OF A CHANGE  
                                                                          )     IN POINT OF DIVERSION, PLACE OF  
                                                                          )     USE AND CHARACTER OF USE

**Authority**

ORS 540.505 to 540.580 establishes 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. OAR Chapter 690, Division 380 implements the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

**Applicant**

DONALD R. HAMBLIN  
29499 BUCHANAN RD.  
CORVALLIS, OR 97333

**Findings of Fact**

**Background**

1. On May 11, 2006, Donald R. Hamblin filed a transfer application to change the use, place of use, and point of diversion under Certificate 27247. The Department assigned the application number T-10173.
2. The right to be transferred is as follows:  
**Certificate:** 27247 in the name of CLAUDE BUCHANAN (perfected under Permit S-21027)  
**Use:** IRRIGATION of 29.3 ACRES  
**Priority Date:** DECEMBER 26, 1951  
**Rate:** 0.36 CUBIC FOOT PER SECOND (cfs)  
**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year  
**Source:** MUDDY CREEK, tributary to MARYS RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
13 S	5 W	WM	16	NW SW	52	<i>Not specified in Certificate</i>

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
13 S	5 W	WM	16	SW NW	52	9.2
13 S	5 W	WM	16	NW SW	52	17.0
13 S	5 W	WM	17	SE NE	52	1.2
13 S	5 W	WM	17	NE SE	52	1.9

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.

- The Department received information that better describes the location of the authorized point of diversion for Certificate 27247 as follows:

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
13 S	5 W	WM	16	NW SW	52	1400 FEET NORTH AND 170 FEET EAST FROM THE SW CORNER OF SECTION 16

- Application T-10173 proposes to move the authorized point of diversion approximately 1/8 mile upstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
13 S	5 W	WM	16	SW SW	52	1260 FEET NORTH AND 710 FEET EAST FROM THE SW CORNER OF SECTION 16

- Application T-10173 proposes to change the character of use to Wildlife Management.

- Application T-10173 also proposes to change the place of use of the right to:

WILDLIFE MANAGEMENT						
Twp	Rng	Mer	Sec	Q-Q	DLC	
13 S	5 W	WM	16	SW NW	52	
13 S	5 W	WM	16	NE SW	52	
13 S	5 W	WM	16	NW SW	52	
13 S	5 W	WM	16	SW SW	52	
13 S	5 W	WM	16	SW SW		
13 S	5 W	WM	16	SE SW	52	
13 S	5 W	WM	16	SE SW		
13 S	5 W	WM	17	SE NE	52	
13 S	5 W	WM	17	NE SE	52	

- Upon review of the proposed transfer of the primary irrigation right under Certificate 27247 described in Findings of Fact #2 and #6, the Department discovered the presence of Greenberry Irrigation District Permits S-54059 (priority date 01/03/2003), S-53779 (priority date 09/01/2000), and S-53780 (priority date 10/04/2000) and Application S-84436 (priority date 05/18/2000) on both the land from which the water right is proposed to be removed and on the proposed lands. Unperfected water uses (presently at the application or permit stage) are not eligible for character of use changes. If T-10173 is approved, the permit or application holder must either move the portions of the supplemental Greenberry Irrigation District permits on the lands described in Findings #2 and #6, by means of a permit amendment, to other lands with primary rights that are similar in reliability to the original primary right, or the permit or application holder will need to agree not to prove up on the portions of the supplemental permits and application on the lands described in Findings of Fact #2 and #6.
- On October 12, 2007, Greenberry Irrigation District (holder of the permits and application described in Finding #7) informed the Department that it consents to the changes proposed in T-10173 and understands the implications to District water right permits and applications appurtenant to the lands.

9. Notice of the application for transfer was published on May 30, 2006 pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
10. The Oregon Department of Fish and Wildlife 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 to 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.
11. On May 18, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10173 to the applicant. The draft Preliminary Determination set forth a deadline of June 18, 2007, for the applicant to respond to the draft and to provide documentation of ownership. 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.

***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, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
13. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
14. T-10173 proposes to increase the size of the place of use of the right evidenced by Certificate 27247 by including the current place of use within the proposed place of use. As defined by OAR-690-380-0100(2) the proposed change could result in enlargement if not conditioned so as to prevent use of more water than could have been beneficially used without waste for the existing authorized use. The best currently available information indicates that beneficial use of water for irrigation of crops in the area would not likely exceed a maximum instantaneous rate of 0.29 cfs and a seasonal use of 2.2 acre-feet per acre on 29.3 acres, for a total volume of 64.46 acre-feet per year.
15. On June 6, 2007, Don Hamblin requested to limit the use under the right evidenced by Certificate 27247 to no more than 64.46 acre-feet per year at a rate not to exceed 0.29 cfs. Therefore, the proposed use, if so conditioned, would not result in enlargement of the right.
16. The proposed change, as conditioned, would not result in injury to other water rights.


**Determination and Proposed Action**

The proposed changes in point of diversion, place of use and character of use in application T-10173 appear to be consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000, and will be approved provided that protests are not filed pursuant to OAR 690-380-4030.

*If application T-10173 is approved, the final order will include the following:*

1. *The changes in point of diversion, place of use and character of use proposed in T-10173 are approved.*
2. *Certificate 27247 is cancelled.*
3. *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 27247, and any related decree.*
4. *The use of water under the right evidenced by Certificate 27247 shall be limited to a rate of 0.29 cfs and a total annual volume of 64.46 acre-feet during the irrigation season of each year.*
5. *Prior to diverting water, the water user shall install and maintain an in-line totalizing flow meter, capable of displaying instantaneous flow, for measuring and recording the quantity of water diverted. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.*
6. *Any pond or wetland area supplied under this right shall be constructed in a manner so as not to appropriate other public waters.*
7. *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.*
8. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2009**. A Claim of Beneficial Use prepared by a Certified Water Rights 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. *When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 17 day of October 2007.

  
Phillip C. Ward, Director

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Dorothy Pedersen at 503-986-0890 or Dorothy.I.Pedersen@wr.d.state.or.us.

*Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.*