



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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March 5, 2012

MICHAEL F. LOCATI  
PO BOX 327  
WALLA WALLA, WA 99362

SUBJECT: Transfer Application T-11107

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11107. 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 30-day 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.

Because the new point of appropriation is more than ¼ mile from the authorized point of appropriation, the applicant is responsible for giving public notice of the transfer changes in a local newspaper having a general circulation in the area of the water right. The notice must be published at least once a week for three consecutive weeks. We have prepared the notice for you (enclosed). The deadline for individuals to file protests or standing statements is 30 days after the date of last publication. Please have the newspaper insert the date of last publication in the proper place.

After publication, the Department needs to receive an affidavit specifying the dates the notice was published. Please have the newspaper prepare and mail an original affidavit of publication to me at the address shown in the letterhead, by April 19, 2012.

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 503-986-0894 or [Joel.M.Plahn@wrđ.state.or.us](mailto:Joel.M.Plahn@wrđ.state.or.us) if I may be of assistance.

Sincerely,

Joel Plahn  
Transfer Specialist  
Transfer and Conservation Section

cc: (Tony G. Justus, District 5 WM) (Molly A. Reid) (Megan Smith) (Hudson Bay Improvement)



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

In the Matter of Transfer Application            )    PRELIMINARY DETERMINATION  
T-11107, Umatilla County                    )    PROPOSING APPROVAL OF A  
  )    CHANGE IN POINT OF  
  )    APPROPRIATION

**Authority**

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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**

MICHAEL F. LOCATI  
PO BOX 327  
WALLA WALLA, WA 99362

**Receiving Landowner**

MEGAN SMITH  
51686 STATELINE RD  
MILTON-FREEWATER OR 97862

**Findings of Fact**

**Background**

1. On July 9, 2010, MICHAEL F. LOCATI filed an application to change the point of appropriation under Certificate 83916. The Department assigned the application number T-11107.

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

**Certificate:** 83916 in the name of MICHAEL F. LOCATI (perfected under Permit U-442)

**Use:** SUPPLEMENTAL IRRIGATION of 2.73 ACRES

**Priority Date:** APRIL 21, 1952

**Rate:** 0.034 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year, provide further that the amount of water allowed herein, together with the amount secured under any other right existing for the same lands shall not exceed the limitation allowed herein.

**Source:** A WELL within the EAST BRANCH OF MUD CREEK BASIN

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.

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q
6 N	35 E	WM	17	NW SW

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	17	SW NW	2.73

3. Certificate 83916 does not describe the location of the point of diversion, however information is available from the CWRE transfer map indicating that the point of diversion is located as follows:

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 N	35 E	WM	17	NW SW	1265 FEET SOUTH AND 775 FEET EAST FROM THE W1/4 CORNER OF SECTION 17

4. Transfer Application T-11107 proposes a new point of appropriation approximately 2000 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	17	SW NW	785 FEET NORTH AND 970 FEET EAST FROM THE W1/4 CORNER OF SECTION 17

5. Notice of the application for transfer was published on July 20, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On January 9, 2012, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11107 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 8, 2012, 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.

**Transfer Review Criteria (OAR 690-380-4010)**

7. Water has been used within the last five years prior to the submittal of Transfer Application T-11107 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.
8. A pump, pipeline, 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-11107.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.

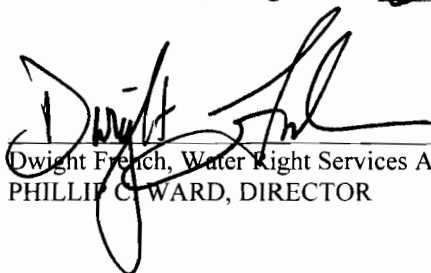
### Determination and Proposed Action

The new point of appropriation proposed in Transfer Application T-11107 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-11107 is approved, the final order will include the following:

1. The new point of appropriation proposed in application T-11107 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 83916 and any related decree.
3. Water right certificate 83916 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.
5. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
6. The Director may require the water user to install a totalizing flow meter or other suitable measuring device at the point of appropriation. If the Director notifies the water user to install a totalizing flow meter or other measuring device, the water user shall install such device specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meter or measuring device in good working order and shall allow the Watermaster access to the meter or measuring device.
7. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2013**. 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.
8. When satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 2 day of March 2012.

  
Dwight French, Water Right Services Administrator, for  
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Joel Plahn. If you have questions about the information in this document, you may reach me at 503-986-0894 or [Joel.M.Plahn@wrд.state.or.us](mailto:Joel.M.Plahn@wrд.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.