



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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April 3, 2012

INGLE BUTTE RANCHES
KIM LEMONS
PO BOX 28
MT VERNON, OR 97865

SUBJECT: Water Right Transfer Application T-11273

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11273. 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 Blue Mountain Eagle 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.

Please do not hesitate to contact me at if I may be of assistance.

Sincerely,

Transfer Specialist
Transfer and Conservation Section

Enclosures

cc: T-11273
Eric W. Julsrud, District 4 Watermaster (*via e-mail*)
Kyle Sullivan, Agent for the applicant (*via e-mail @sullivank@centurytel.net*)



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

In the Matter of Transfer Application)
T-11273, Grant County)
)
) PRELIMINARY DETERMINATION
) PROPOSING APPROVAL OF
) CHANGES IN POINT OF DIVERSION
) AND PLACE 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

KIM LEMONS
INGLE BUTTE RANCHES
PO BOX 28
MT VERNON, OR 97865

Findings of Fact

Background

1. On July 25, 2011, KIM LEMONS AND INGLE BUTTE RANCHES filed an application to change the point of diversion and place of use under Certificate 50672. The Department assigned the application number T-11273.

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

Certificate: 50672 in the names of DONALD AND ELSA BOYER and ROBERT AND WILDA HUTCHISON (perfected under Permit S-28815)

Use: IRRIGATION of 0.4 ACRE

Priority Date: APRIL 25, 1963

Rate: 0.01 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-FORTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year; provided further that the right to the use of water is

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.

limited to the period when flow of the John Day River is more than 30 cfs at USGS Gage 14-0465 and more than 20 cfs at USGS Gage 14-0480.

Source: BEECH CREEK, tributary to the JOHN DAY RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	30 E	WM	28	SE NW	1620 FEET SOUTH AND 2330 FEET EAST FROM THE NW CORNER OF SECTION 28

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	30 E	WM	29	NE SE	0.4

- Transfer Application T-11273 proposes to move the authorized point of diversion approximately 4350 feet downstream to a point on the John Day River:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	30 E	WM	29	SE NE	120 FEET NORTH AND 1270 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 29

- Transfer Application T-11273 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	30 E	WM	29	SE NE	0.4

- The source of water under this right is Beech Creek. The quantity of water diverted at the new point of diversion on the John Day River shall not exceed the quantity of water lawfully available at the original point of diversion on Beech Creek.
- To ensure the source remains Beech Creek, suitable measuring devices for a “measure in – measure out” of the Beech Creek water entering the John Day River and then being pumped out again at the proposed point of diversion must be installed.
- Notice of the application for transfer was published on August 2, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On March 7, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11273 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 9, 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.

9. The Oregon Department of Fish and Wildlife (ODFW) 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 safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

10. 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.
11. 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-11273.
12. The proposed changes would not result in enlargement of the right.
13. The proposed changes as conditioned in Finding of Fact No. 5 would not result in injury to other rights.

Determination and Proposed Action

The change in points of diversion and change in place of use proposed in Transfer Application T-11273 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-11273 is approved, the final order will include the following:

1. *The change in point of diversion and change in place of use proposed in Transfer Application T-11273 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 50672 and any related decree.*
3. *Water right certificate 50672 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 diversion on the John Day River shall not exceed the quantity of water lawfully available at the original point of diversion on Beech Creek.*

5. *Water use measurement conditions:*

a. *Before water use may begin under this order, the water user shall install a measuring device in the main channel of Beech Creek below the authorized point of diversion to enable measurement of the quantity of Beech Creek water that will enter the John Day River. 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.*

b. *The water user must coordinate with Oregon Dept. of Fish and Wildlife and the Oregon Dept. of State Lands for the appropriate permits or construction criteria needed for the installation and operation of the measuring device.*

c. *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 point of diversion.*

d. *The water user shall maintain the meters or measuring devices in good working order.*

e. *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. *Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*

7. *The former place of use of the transferred right shall no longer receive water under the right.*

8. *Full beneficial use of the water shall be made, consistent with the terms of this order, 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 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.*

Dated at Salem, Oregon this 4th day of April, 2012.


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

This Preliminary Determination was prepared by Teri Hranac. If you have questions about the information in this document, you may reach me at 503-986-0881 or Teri.K.Hranac@wrд.state.or.us.

Protests should be addressed to the attention of Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

