



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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July 19, 2012

### Applicant

RAY PROCK  
20790 KENO WORDEN ROAD  
KLAMATH FALLS, OR 97603

SUBJECT: Water Right Transfer Application T-11246

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11246. 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 Herald and News 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 (503) 986-0890 or [Dorothy.I.Pedersen@wr.d.state.or.us](mailto:Dorothy.I.Pedersen@wr.d.state.or.us) if I may be of assistance.

Sincerely,

Dorothy Pedersen  
Transfer Program Advisor

cc: T-11246  
Scott White, District 17 Watermaster (*via e-mail*)  
Andrew Hanson, Agent for the applicant (*via e-mail*)

encs





acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A well within the Bear Creek Basin

**Authorized Point of Appropriation:**

	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
WELL 2	41 S	8 E	WM	5	NE SE	3270 FEET SOUTH AND 800 FEET WEST FROM THE NE CORNER OF SECTION 5

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	8 E	WM	4	SW NE	34.6
41 S	8 E	WM	4	NE NW	8.0
41 S	8 E	WM	4	NW NW	8.0
41 S	8 E	WM	4	SW NW	29.8
41 S	8 E	WM	4	SE NW	40.0
41 S	8 E	WM	4	NE SW	36.4
41 S	8 E	WM	4	NW SW	38.2
41 S	8 E	WM	4	SW SW	1.4
41 S	8 E	WM	4	NW SE	36.6
41 S	8 E	WM	5	NE NE	7.4
41 S	8 E	WM	5	SE NE	9.0
41 S	8 E	WM	5	NE SE	32.2
41 S	8 E	WM	5	NW SE	4.4
41 S	8 E	WM	5	SW SE	5.2
41 S	8 E	WM	5	SE SE	23.6

4. Transfer Application T-11246 proposes an additional point of appropriation approximately 1400 feet from the existing point of appropriation:

	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
WELL 3	41 S	8 E	WM	5	SE NE	2000 FEET SOUTH AND 200 FEET WEST FROM THE NE CORNER OF SECTION 5

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

**Certificate:** 66767 in the name of Winston H. and Louise Patterson, (perfected under Permit G-7256)  
**Use:** Irrigation of 146.3 acres and supplemental irrigation of 42.8 acres  
**Priority Date:** May 25, 1977  
**Rate:** 2.35 cubic feet 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-eightieth 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 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A well within the Klamath River Basin

**Authorized Point of Appropriation:**

	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
WELL 1	41 S	8 E	WM	5	NW NE	1220 FEET SOUTH AND 1390 FEET WEST FROM NE CORNER OF SECTION 5

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	8 E	WM	4	NE NW	25.4
41 S	8 E	WM	4	NW NW	32.0
41 S	8 E	WM	5	NE NE	28.8
41 S	8 E	WM	5	NW NE	37.2
41 S	8 E	WM	5	NE NW	8.8
41 S	8 E	WM	5	NE SE	1.0
41 S	8 E	WM	5	NW SE	1.5
41 S	8 E	WM	5	SW SE	4.1
41 S	8 E	WM	5	SE SE	7.5

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	8 E	WM	4	NE NW	8.0
41 S	8 E	WM	4	NW NW	8.0
41 S	8 E	WM	4	SW NW	10.4
41 S	8 E	WM	5	NE NE	7.4
41 S	8 E	WM	5	SE NE	9.0

6. Transfer Application T-11246 proposes an additional point of appropriation approximately 1400 feet from the existing point of appropriation:

	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
WELL 3	41 S	8 E	WM	5	SE NE	2000 FEET SOUTH AND 200 FEET WEST FROM THE NE CORNER OF SECTION 5

7. Notice of the application for transfer was published on May 24, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On February 10, 2012, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11246 to the applicant, based on the original application. The draft Preliminary Determination cover letter set forth a deadline of March 11, 2012, for the applicant to respond. The applicant requested that the Department allow 180 days additional time for response before proceeding with issuance of a Preliminary Determination. On June 28, 2012, the applicant amended the application, provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer, and agreed to install measuring devices at each point of appropriation.

9. On July 6, 2012, the Department mailed a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-11246 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of August 6, 2012, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.
10. Water has been used within the last five years prior to the submittal of Transfer Application T-11246 according to the terms and conditions of the rights. There is insufficient information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
11. 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-11246.
12. The Department finds the proposed change may result in enlargement of the rights, unless conditioned to prevent more water from being diverted from the combined existing and proposed points of appropriation than what is available at the authorized point of appropriation.
13. On June 28, 2012, the applicant submitted a letter agreeing to condition the transfer as below, which will be sufficient to ensure that the change would not result in enlargement of the rights:
  - 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 point of appropriation. The water user shall maintain the meters or measuring devices in good working order.
  - b. The water user shall keep a complete record of the amount of water appropriated.
  - 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.
14. The transfer, as conditioned, would not result in enlargement of the rights.
15. The proposed change would not result in injury to other water rights.

#### **Determination and Proposed Action**

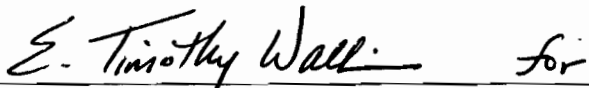
The additional point of appropriation proposed in Transfer Application T-11246 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

*If Transfer Application T-11246 is approved, the final order will include the following:*

1. *The additional point of appropriation proposed in application T-11246 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 44401 and 66767 and any related decree.*
3. *Water right certificates 44401 and 66767 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
4. *The quantity of water diverted at the additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
5. *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 point of appropriation. The water user shall maintain the meters or measuring devices in good working order.*
  - b. *The water user shall keep a complete record of the amount of water appropriated.*
  - 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.*
6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
7. *The approved changes 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 changes and full beneficial use of the water.*
8. *When satisfactory proof of the completed change is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 19<sup>th</sup> day of July, 2012.

 *E. Timothy Wall* for

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

This Preliminary Determination was prepared by Dorothy Pedersen. If you have questions about the information in this document, you may reach me at 503-986-0890 or [Dorothy.I.Pedersen@wrdd.state.or.us](mailto:Dorothy.I.Pedersen@wrdd.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.