



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department
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July 25, 2012

VIA E-MAIL

Applicant

CHRISTOPHER JAMES RAY
ANNE R. RAY
6144 MOLTHAN RANCH RD
IRONSIDE, OR 97908
chrisray@raybrothers.net

SUBJECT: Water Right Transfer Application T-11413

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11413. 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 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 Department's notice.

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 503-986-0881 or teri.k.hranac@wrđ.state.or.us, if I may be of assistance.

Sincerely,

Teri Hranac
Transfer Specialist
Transfer and Conservation Section

cc: T-11413
Ronald K. Jacobs, District 9 Watermaster (*via e-mail at ron.k.jacobs@wrđ.state.or.us*)
Nancy Rorick, Agent for the applicant (*via e-mail at nrorick@yahoo.com*)



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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11413, Malheur County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE

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.

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Findings of Fact

Background

1. On April 27, 2012, Christopher James Ray filed an application to change the place of use under Certificate 85564. The Department assigned the application number T-11413.
2. On July 5, 2012, the applicant submitted an amended map clarifying the source of water for the proposed place of use.
3. On July 23, 2012, the application was amended to include Anne R. Ray as a co-applicant.
4. The portion of the right to be transferred is as follows:

Certificate: 85564 in the name of JOHN MOLTHAN (perfected under Permit G-10941)
Use: SUPPLEMENTAL IRRIGATION of 38.8 ACRES
Priority Date: AUGUST 11, 1989
Rate: 0.42 CUBIC FOOT PER SECOND (CFS), BEING 0.08 CFS FROM WELL 1 AND 0.34 CFS FROM WELL 2
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

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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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. The right is limited to any deficiency in the available supply of any prior right for the same land and shall not exceed the limitation allowed herein.

Sources: WELLS 1 AND 2 within the MIDDLE FORK WILLOW CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	39 E	WM	20	SE SE	WELL 1 - 200 FEET NORTH AND 1270 FEET WEST FROM THE SE CORNER OF SECTION 20
14 S	39 E	WM	21	SE SW	WELL 2 - 350 FEET NORTH FROM THE S¼ CORNER OF SECTION 21

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Source	Twp	Rng	Mer	Sec	Q-Q	Acres
Well 1	14 S	39 E	WM	20	SE SE	7.1
Well 1	14 S	39 E	WM	21	SW SW	0.1
Well 2	14 S	39 E	WM	21	SE SW	21.6
Well 2	14 S	39 E	WM	21	SW SE	10.0
Total						38.8

5. Transfer Application T-11413 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION						
Source	Twp	Rng	Mer	Sec	Q-Q	Acres
Well 1	14 S	39 E	WM	21	NE SW	7.2
Well 2	14 S	39 E	WM	21	NE SW	6.8
Well 2	14 S	39 E	WM	21	SE SW	1.9
Well 2	14 S	39 E	WM	21	NW SE	22.8
Well 2	14 S	39 E	WM	21	SW SE	0.1
Total						38.8

6. Notice of the application for transfer was published on May 1, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On July 10, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11413 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of August 10, 2012, for the applicants to respond. The applicants 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)

8. 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.

9. 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-11413.
10. The proposed change would not result in enlargement of the right. The supplemental right is being moved from a place of use to which one primary irrigation right is appurtenant onto a place of use to which other primary irrigation rights are appurtenant. However, the proposed change would not result in enlargement because the availability of water for the primary rights is similar and the transfer will not result in additional use of the supplemental right.
11. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-11413 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-11413 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-11413 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 85564 and any related decree.*
3. *Water right certificate 85564 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install totalizing flow meters, or, with prior approval of the Director, other suitable measuring devices at each existing point of appropriation.*
 - 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.*
5. *The former place of use of the transferred right shall no longer receive water under the right.*
6. *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 change and full beneficial use of the water.*

7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 27th 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 Teri Hranac. If you have questions about the information in this document, you may reach me at 503-986-0881 or Teri.K.Hranac@wrd.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.