



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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September 21, 2012

VIA E-MAIL

### **Applicant**

TRUDY JESSEN  
BOX 388  
PILOT ROCK, OR 97868

SUBJECT: Water Right Transfer Application T-11356

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11356. 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 Pendleton Record 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 Department's notice *or* 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@wrdd.state.or.us](mailto:Dorothy.I.Pedersen@wrdd.state.or.us) if I may be of assistance.

Sincerely,

Dorothy I. Pedersen  
Transfer Program Advisor

cc: File T-11356  
Tony G. Justus, District 5 Watermaster (*via e-mail*)

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

In the Matter of Transfer Application            )  
T-11356, Umatilla County                        )  
  )  
  )    PRELIMINARY DETERMINATION  
  )    PROPOSING APPROVAL OF  
  )    ADDITIONAL POINTS OF DIVERSION

**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**

TRUDY JESSEN  
P.O. BOX 388  
PILOT ROCK, OR 97868

**Findings of Fact**

***Background***

1. On February 21, 2012, Trudy Jessen (Draper), filed an application to add additional points of diversion under Certificate 86819. The Department assigned the application number T-11356.
  
2. The right to be transferred is as follows:
  - Certificate:**       86819 in the name of PERRY KNOTTS (confirmed by decree of the Circuit Court of the State of Oregon for Umatilla County)
  - Use:**                IRRIGATION of 12.0 ACRES, DOMESTIC and STOCK USE
  - Priority Date:**   1882 for 4.0 ACRES and 1898 for 8.0 ACRES
  - Rate:**             0.15 CUBIC FOOT PER SECOND (cfs)
  - Limit/Duty:**     The use is subject to the provisions of paragraph 33 of said decree and all other conditions and limitations contained in said decree
  - Source:**           CALIFORNIA GULCH, a tributary of EAST BIRCH CREEK

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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**Authorized Place of Use:**

IRRIGATION, DOMESTIC LIVESTOCK							
Twp	Rng	Mer	Sec	Q - Q	Priority Date	Tax Lot	Acres
2 S	32 E	WM	10	NE NW	1882	500	4.00
2 S	32 E	WM	10	NE NW	1898	500	1.63
2 S	32 E	WM	10	NE NW	1898	400	3.37
2 S	32 E	WM	10	SE NW	1898	400	3.00

3. Certificate 86819 does not describe the location of the point of diversion. However information is available from the Umatilla River adjudication map and from the current map prepared by the applicant's Certified Water Rights Examiner based on a recent field visit and subsequent survey indicating that the point of diversion on California Gulch is located as follows:

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
9 S	21 E	WM	15	NE NE	SOUTH 7 DEGREES, 53 MINUTES, 31 SECONDS WEST; 2499.32 FEET FROM THE N¼ CORNER OF SECTION 10

4. Transfer Application T-11356 proposes to add additional points of diversion downstream approximately 1500 feet to proposed POD#1 and downstream approximately 3100 feet to proposed POD#2 on East Birch Creek located:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 S	32 E	WM	10	NE NW	POD #1 - SOUTH 21 DEGREES, 51 MINUTE, 37 SECONDS WEST; 1375.65 FEET FROM THE N¼ CORNER OF SECTION 10
2 S	32 E	WM	10	NE NW	POD #2 - SOUTH 82 DEGREES, 13 MINUTES, 20 SECONDS WEST; 1335.1 FEET FROM THE N¼ CORNER OF SECTION 10

5. Transfer Application T-11356 also proposes to irrigate the following lands from each additional point of diversion (in addition to the original authorized POD) as follows:

**Authorized Place of Use:**

IRRIGATION, DOMESTIC LIVESTOCK								
Twp	Rng	Mer	Sec	Q - Q	Priority Date	Tax Lot	Proposed POD#	Acres
2 S	32 E	WM	10	NE NW	1882	500	POD#2	4.00
2 S	32 E	WM	10	NE NW	1898	500	POD#2	1.63
2 S	32 E	WM	10	NE NW	1898	400	POD#1	3.37
2 S	32 E	WM	10	SE NW	1898	400	POD#1	3.00

6. Certificate 86819 states California Gulch is a tributary to the Umatilla River. However, California Gulch actually flows into East Birch Creek, which in turn contributes to Birch Creek and the Umatilla River.
7. Notice of the application for transfer was published on February 28, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

8. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new points of diversion to prevent fish from entering the diversions and that the diversions are not currently equipped with an appropriate fish screen. This diversions may be eligible for screening cost-share funds.
9. On July 19, 2012, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11356 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 20, 2012, for the applicant to respond. On September 12, 2012, the applicant hand delivered a request for the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that she is authorized to pursue the transfer.

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

10. Water has been used within the five-year period prior to submittal of the transfer application 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 was present within the five-year period prior to submittal of Transfer Application T-11356.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

**Determination and Proposed Action**

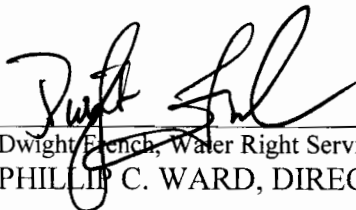
The change to add additional points of diversion proposed in Transfer Application T-11356 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-11356 is approved, the final order will include the following:*

1. *The change to add additional points of diversion proposed in application T-11356 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 86819 and any related decree.*
3. *Water right certificate 86819 is cancelled.*
4. *The quantity of water diverted at the new additional points of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion on California Gulch.*

5. *The water user shall maintain and operate the existing measurement devices and shall make such improvements as may be required by the Department.*
6. *Prior to diverting water, the water user shall install approved fish screens at the new points of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screens meet the state's criteria, or that ODFW has determined screens are not necessary. The water user shall operate and maintain the fish screens at the new points of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines a screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2014**. 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. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 24 day of September, 2012.



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

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@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.