



Oregon

John A. Kitzhaber, MD, Governor
November 30, 2012

Water Resources Department
North Mall Office Building
725 Summer St. NE, Suite A
Salem, OR 97301
Phone 503-986-0900
FAX 503-986-0904
www.wrd.state.or.us

VIA E-MAIL: rregresti@hotmail.com, and postal mail:

Applicants

RON AND RUTH AGRESTI
1231 S. KILROY RD.
TURLOCK, CA 95380-9570

SUBJECT: Water Right Transfer Application T-11131

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11131. 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) 986-0890 or Dorothy.I.Pedersen@wrdd.state.or.us if I may be of assistance.

Sincerely,

Dorothy Pedersen
Transfer Program Advisor

cc: T-11131
Greg Beaman, District 1 Watermaster (via e-mail)
Kelly & Janice Laviolette (via e-mail: kellysbrightonmarina@hotmail.com)
Bayside Surveying, CWRE #377

encs



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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11131, Tillamook County	)	PROPOSING APPROVAL OF AN
	)	ADDITIONAL POINT 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

RON AND RUTH AGRESTI
1231 S. KILROY RD.
TURLOCK, CA 97380-9570

Receiving Landowner

KELLY AND JANICE LAVIOLETTE
29200 HWY 101 N
ROCKAWAY BEACH, OR 97136

Findings of Fact

Background

1. On September 10, 2010, RON AGRESTI filed an application to change the point of diversion under Certificate 23644. The Department assigned the application number T-11131.
2. Kelly and Janice Laviolette are the receiving landowners who will be responsible for completion of the changes.
3. The portion of the right to be transferred is as follows:

Certificate:	23644 in the name of M.T. EDWARDS (perfected under Permit S-17904)
Use:	DOMESTIC INCLUDING LAWN AND GARDEN of not to exceed ½ ACRE
Priority Date:	AUGUST 14, 1946
Rate:	0.0033 CUBIC FOOT PER SECOND
Source:	UNNAMED STREAM, tributary to the NEHALEM BAY

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
2 N	10 W	WM	9	SE SW

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 Place of Use:

DOMESTIC INCLUDING LAWN AND GARDEN						
Twp	Rng	Mer	Sec	Q-Q	GLot	Map
2 N	10 W	WM	9	SW SW	4	2N10 09CC 4500 2N10 09CC 4401

4. Certificate 23644 does not describe the meets and bounds for the authorized point of diversion, however information is available from the transfer application and transfer application map which indicates that the authorized point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	10 W	WM	9	SE SW	900 FEET NORTH AND 400 FEET WEST FROM THE SOUTH ¼ CORNER OF SECTION 9

5. Transfer Application T-11131 proposes an additional point of diversion approximately 366 feet south and 1235 feet west (downstream) to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	10 W	WM	9	SW SW	534 FEET NORTH AND 615 FEET WEST FROM THE WEST 1/16 TH CORNER OF THE SW¼ SW¼ OF SECTION 9

6. Notice of the application for transfer was published on September 21, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On August 8, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11131 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of September 7, 2012, for the applicants to respond. The applicants requested and were granted an extension of time until October 17, 2012 to provide the necessary materials to proceed with the transfer.
8. On October 22, 2012, the Oregon Department of Fish and Wildlife submitted a revised fish screen comment form.
9. On November 21, 2012 the Draft Preliminary Determination was revised, based on the revised ODFW review, and sent to the applicants. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that they are authorized to pursue the transfer.

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 pump and pipeline 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-11131.
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.

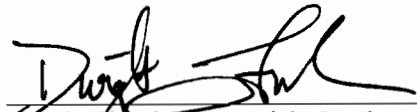
Determination and Proposed Action

The additional point of diversion proposed in Transfer Application T-11131 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-11131 is approved, the final order will include the following:

1. *The additional point of diversion proposed in application T-11131 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 23644 and any related decree.*
3. *Water right certificate 23644 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 additional point 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.*
5. *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.*
6. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 30 day of November, 2012.



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

This Preliminary Determination was prepared by Carrie Matthews. If you have questions about the information in this document, you may reach me at 541-523-8224 x 36 or Carrie.R.Matthews@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.