



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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December 5, 2012

FINLEY REVOCABLE LIVING TRUST
2025 SE POWELLS RD
CORVALLIS, OR 97333

SUBJECT: Water Right Transfer Application T-11433

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11433. 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@wr.d.state.or.us, if I may be of assistance.

Sincerely,

Teri Hranac
Transfer Specialist
Transfer and Conservation Section

Enclosures

cc: T-11433
Mike L. McCord, District 16 Watermaster (*via e-mail*)
Elizabeth Lenehan, Agent for the applicant, 2131 SE Powells Road, Corvallis, OR 97333
Tyler Parsons, CWRE #217, 1915 SE Stone Street, Corvallis, OR 97333



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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11433, Benton County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF
)	APPROPRIATION AND
)	REDESCRIPTION OF WATER RIGHT

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.

Applicant

FINLEY REVOCABLE LIVING TRUST
2025 SE POWELLS RD
CORVALLIS, OR 97333

Findings of Fact

Background

1. On June 15, 2012, FINLEY REVOCABLE LIVING TRUST filed an application to change the point of appropriation under Certificate 47253. The Department assigned the application number T-11433.
2. The water right associated with Certificate 47253 is now in two separate ownerships; Lot 3 (TL 800) and Lot 4 (TL 802 & 803) of Island Acres Subdivision. A recent survey conducted by a professional land surveyor and Certified Water Right Examiner indicates Certificate 47253 requires a redescription of the place of use and point of appropriation.
3. Based on a more accurate survey using GPS, including determination of the 1/16 section corner locations and measurements to the brass cap at the northwest corner of Section 24, Certificate 47253 should be redescribed as follows:

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	5 W	WM	24	SW NE	2360 FEET SOUTH AND 3130 FEET EAST FROM THE NW CORNER OF SECTION 24

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:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Original Acres	Redescribed Acres	Redescribed Lot
12 S	5 W	WM	24	SW NE	10.6	9.4	3
12 S	5 W	WM	24	SW NE		1.5	4
12 S	5 W	WM	24	SE NW	4.6	0.5	3
12 S	5 W	WM	24	SE NW		3.8	4
12 S	5 W	WM	24	NE SW	3.5	3.4	4
12 S	5 W	WM	24	NW SE	1.1	1.2	4
Totals					19.8	19.8	

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

Certificate: 47253 in the name of LESLIE AND MARGARET WHEELER (perfected under Permit G-6196)

Use: IRRIGATION OF 9.9 ACRES

Priority Date: AUGUST 2, 1974

Rate: 0.125 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-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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL within the WILLAMETTE RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	5 W	WM	24	SW NE	2330 FEET SOUTH AND 3080 FEET EAST FROM THE NW CORNER OF SECTION 24

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	5 W	WM	24	SW NE	1.5
12 S	5 W	WM	24	SE NW	3.8
12 S	5 W	WM	24	NE SW	3.4
12 S	5 W	WM	24	NW SE	1.2
Total					9.9

5. Transfer Application T-11433 proposes to move the authorized point of appropriation approximately 225 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	5 W	WM	24	SW NE	2540 FEET SOUTH AND 2950 FEET EAST FROM THE NW CORNER OF SECTION 24

6. Notice of the application for transfer was published on June 19, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On November 21, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11433 to the applicant. Additionally, a copy of the draft Preliminary Determination was sent to the neighboring landowner affected by the redescription of the Certificate. The draft Preliminary Determination cover letter set forth a deadline of November 21, 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.
8. On December 4, 2012, the neighboring landowner also concurred with the proposed action and conditions set forth in the draft Preliminary Determination.

Transfer Review Criteria (OAR 690-380-4010)

9. 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.
10. 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-11433.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in point of appropriation proposed in Transfer Application T-11433 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-11433 is approved, the final order will include the following:

1. *The change in point of appropriation proposed in application T-11433 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 47253 and any related decree.*
3. *Water right certificate 47253 is cancelled. A new certificate will be issued describing that portion of the right as redescribed not affected by this transfer.*
4. *The quantity of water diverted at the new 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 at the point of appropriation.*
 - b. *The water user shall maintain the meter or measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is 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. *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 6 day of December, 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@ 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.