



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department
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February 15, 2013

Applicant

DELWIN AND LOIS KROPP
PO BOX 74
CHRISTMAS VALLEY, OR 97641

Receiving Landowner

NATHANIEL ROTH
PO BOX 706
CHRISTMAS VALLEY, OR 97641

SUBJECT: Water Right Transfer Application T-11421

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11421. 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 Lake County Examiner 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 503-986-0881 or Teri.K.Hranac@wrd.state.or.us if I may be of assistance.

Sincerely,

Dorothy Pedersen
Transfer Program Advisor
Transfer and Conservation Section

Enclosures

cc: T-11421
Brian M. Mayer, District 12 Watermaster (*via e-mail*)
Bruce A. Estes, Agent for the applicant (*via e-mail*)



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

In the Matter of Transfer Application)
T-11421, Lake County)
)
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)
)
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PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF
CHANGES IN POINT OF
APPROPRIATION AND 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 May 14, 2012, DELWIN AND LOIS KROPF filed an application to change the point of appropriation and to change the place of use under Certificates 48606 and 53059. The Department assigned the application number T-11421.
2. Nathaniel Roth is the receiving landowner who will be responsible for completion of the changes.
3. The first right to be transferred is as follows:

Certificate: 48606 in the name of KENNETH E. POWELL (perfected under Permit G-5895)
Use: IRRIGATION of 18.0 ACRES
Priority Date: AUGUST 2, 1973
Rate: 0.22 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 3.0

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.

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

Source: A WELL within the FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	16 E	WM	21	NE NE	680 FEET SOUTH AND 230 FEET WEST FROM THE NE CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	16 E	WM	21	NE NE	18.0

4. Transfer Application T-11421 proposes to move the authorized point of appropriation approximately 21 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	18 E	WM	35	NW NW	1200 FEET SOUTH AND 1250 FEET EAST FROM THE NW CORNER OF SECTION 35

5. Transfer Application T-11421 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	18 E	WM	35	NE NW	18.0

6. The second right to be transferred is as follows:

Certificate: 53059 in the name of KENNETH E. POWELL (perfected under Permit G-10235)

Use: IRRIGATION of 19.7 ACRES

Priority Date: SEPTEMBER 15, 1983

Rate: 0.25 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.; *provided further that in the event of a request for a change in point of appropriation, an additional point of appropriation or repair of this well, the quantity of water allowed herein together with any other right from this point shall not exceed the capacity of this well at the time of perfection of this right.*

Source: A WELL within the FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	16 E	WM	21	NE NE	680 FEET SOUTH AND 230 FEET WEST FROM THE NE CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	16 E	WM	21	NE NE	19.7

- According to Department records, the capacity of well at the time of perfection of Permit G-10235 was 0.49 cfs. This quantity will not be exceeded with continued limitation of 0.25 cfs for the right evidenced by Certificate 53059, and 0.22 cfs for the right evidenced by Certificate 48606.
- Transfer Application T-11421 proposes to move the authorized point of appropriation approximately 21 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	18 E	WM	35	NW NW	1200 FEET SOUTH AND 1250 FEET EAST FROM THE NW CORNER OF SECTION 35

- Transfer Application T-11421 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	18 E	WM	35	NE NW	15.6
24 S	18 E	WM	35	SE NW	4.1

- Notice of the application for transfer was published on May 22, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On November 21, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11421 to the applicants and the receiving landowner. The draft Preliminary Determination cover letter set forth a deadline of December 20, 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.
- On December 17, 2012, the receiving landowner requested Table 1 of the application be amended to show the location of the proposed point of appropriation (Lake 1689).

Transfer Review Criteria (OAR 690-380-4010)

- Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

14. 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-11421.
15. The proposed changes would not result in enlargement of the rights.
16. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The change in point of appropriation and change in place of use proposed in Transfer Application T-11421 appear 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-11421 is approved, the final order will include the following:

1. *The change in point of appropriation and change in place of use proposed in application T-11421 are 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 Certificates 48606, 53059, and any related decree.*
3. *Water right certificates 48606 and 53059 are cancelled.*
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. *The quantity of water allowed under Certificate 53059 (0.25 cfs) together with Certificate 48066 (0.22 cfs) shall not exceed the capacity of the well Lake 889 at the time of perfection of Permit G-10235 (0.49 cfs).*
6. *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 at each new 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.*
7. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*

8. *The former place of use of the transferred right shall no longer receive water under the right.*
9. *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 receiving landowner to the Department within one year after the deadline for completion of the change and full beneficial use of the water.*
10. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 4 day of February, 2013.


Dwight French, Water Right Services Administrator, for
PHILIP 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@wrđ.state.or.us.

Protests should be addressed to the attention of Transfer and Conservation Section,
Water Resources Department, 725 Summer Street NE, Suite A, Salem, OR 97301-1266.