



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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February 15, 2013

VIA E-MAIL: arda.berryhill@frontier.com and dianeberryhill@frontier.com

Applicant

ROGER BERRYHILL NURSERY
ATTN: ARDA C. BERRYHILL
ATTN: DIANE BERRYHILL
21400 SW SCHOLLS SHERWOOD RD
SHERWOOD, OR 97140

SUBJECT: Water Right Transfer Application T-11480

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11480. 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@wrds.state.or.us if I may be of assistance.

Sincerely,

Dorothy Pedersen
Transfer Program Advisor

cc: T-11480
Cole Beaman, District 18 Watermaster (via e-mail)
Ted Ressler, Agent for the applicant (via e-mail: tressler@gsiws.com)
Steve Shropshire, Attorney (via e-mail: Steve.Shropshire@jordanramis.com)

encs



exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: TUALATIN RIVER, tributary to the WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot
2 S	2 W	WM	14	NW SW	6

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
2 S	2 W	WM	14	NW SW		48	0.10
2 S	2 W	WM	14	NW SW	6		9.00
2 S	2 W	WM	14	SW SW		48	0.20
2 S	2 W	WM	14	SW SW	7		4.60

4. Certificate 72228 does not describe the location of the point of diversion by measurements from a section corner, however information is available from the transfer application map, indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
2 S	2 W	WM	14	NW SW	6	2370 FEET NORTH AND 1325 FEET EAST FROM THE SW CORNER OF SECTION 14

5. Application T-11480 proposes to change the place of use of the right to:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Tax Lot	Acres
2 S	2 W	WM	14	NW SW		48	715	0.77
2 S	2 W	WM	14	NW SW	6		715	3.81
2 S	2 W	WM	14	SW SW		48	715	0.08
2 S	2 W	WM	14	SW SW	7		715	2.97
2 S	2 W	WM	14	SW SW	7		400	3.60
2 S	2 W	WM	23	NE NW			304	2.12
2 S	2 W	WM	23	NW NW	1		304	0.55

6. Water Right Application G-17472 (filed June 17, 2011, proposing irrigation from groundwater) covers 2.5 of the acres to which T-11480 proposes to move the right evidenced by Certificate 72228. The applicant proposes to cancel Application G-17472 upon issuance of a Final Order approving T-11480, instead of diminishing Application G-17472 to supplemental irrigation.
7. Notice of the application for transfer was published on October 16, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On December 19, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11480 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 19, 2013, 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.

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

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-11480.
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

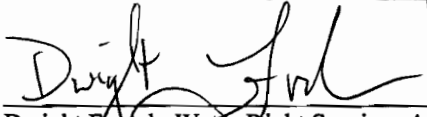
The change in place of use proposed in Transfer Application T-11480 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-11480 is approved, the final order will include the following:

1. *The change in place of use proposed in application T-11480 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 72228 and any related decree.*
3. *Water right certificate 72228 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 a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at the point of diversion.*
 - 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.*
5. *The former place of use of the transferred portion of the 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, 2017**. 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 14 day of February, 2013.


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

This Preliminary Determination was prepared by Dorothy Pedersen. If you have questions about the information in this document, you may reach me at 503-986-0890 or Dorothy.I.Pedersen@wr.d.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.