



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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March 20, 2013

Applicant

JOHN M. LIPKOWITZ
2024 SUMMER BLOSSOM #102
LAS VEGAS, NV 89134

SUBJECT: Water Right Transfer Application T-11463

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11463. 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 Frontier Advertiser 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, whichever is later.

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@wrp.state.or.us if I may be of assistance.

Sincerely,

Dorothy I. Pedersen
Transfer Program Advisor

cc: T-11463
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)
John A. Short, Agent for the applicant (*via e-mail*: johnshort@usa.com)

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

In the Matter of Transfer Application)
T-11463, Klamath County)
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PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A
CHANGE IN POINT OF
APPROPRIATION AND PLACE OF
USE AND CHARACTER 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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Agent
WATER RIGHT SERVICES, LLC/ JOHN SHORT
P.O. BOX 1830
BEND, OR 97709

Findings of Fact

Background

1. On August 31, 2012, John M. Lipkowitz filed an application to change the point of appropriation and change the place of use and to change the character of use under Certificate 33418. The Department assigned the application number T-11463.
2. The applicant will be responsible for completion of the changes.
3. On January 22, 2013, the applicant’s agent submitted clarification of the proposed beneficial uses.
4. The portion of the right to be transferred is as follows:

Certificate: 33418 in the name of R.S. HAWTHORNE (perfected under Permit G-1271)
Use: IRRIGATION of 2.0 ACRES
Priority Date: FEBRUARY 11, 1959
Rate: 0.02 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each

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 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.

Source: A WELL

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	10 E	WM	28	SE NE	650 FEET NORTH AND 660 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 28

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	10 E	WM	28	SE NE	2.0

- Transfer Application T-11463 proposes to change the character of use of water from these 2.0 acres to pond storage and maintenance of the water level in the pond for fish, wildlife, irrigation and recreation.

- Application T-11463 proposes to change the point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	10 E	WM	30	NE SE	1260 FEET SOUTH AND 500 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 30

- Application T-11463 also proposes to change the place of use to:

STORAGE AND POND LEVEL MAINTENANCE FOR FISH , WILDLIFE, IRRIGATION, AND RECREATION					
Twp	Rng	Mer	Sec	Q-Q	Tax Lot
22 S	10 E	WM	30	NE SE	400

- The annual quantity of water that can maximally be used beneficially without waste under the transferred portion of the right is limited to 3.0 AF per acre x 2.0 acres = 6.0 AF per year, diverted at a rate not to exceed 0.02 cfs.
- Notice of the application for transfer was published on September 4, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On January 22, 2013, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11463 to the applicant and agent. The draft Preliminary Determination cover letter set forth a deadline of February 22, 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)

11. Water has been used within the five years prior to the submittal of Transfer Application T-11463 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.
12. 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-11463.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in point of appropriation, change in place of use and change in character of use proposed in Transfer Application T-11463 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-11463 is approved, the final order will include the following:

1. *The change in point of appropriation, change in place of use and change in character of use proposed in application T-11463 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 Certificate 33418 and any related decree.*
3. *Water right certificate 33418 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 new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation, and is limited to 6.0 AF per year, diverted at a rate not to exceed 0.02 cfs.*
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 the 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 meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
 - d. *Before water use may begin under this order the water user shall install in the pond a staff plate that is acceptable to the Watermaster, or, with prior approval of the*

Director, another suitable measuring device that measures the entire range and stage between empty and full in the reservoir.

6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
7. *The former place of use of the transferred right (2.0 acres) shall no longer receive water under the right.*
8. *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 changes and full beneficial use of the water.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 20 day of March, 2013.


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

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