



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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Salem, OR 97301
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March 18, 2013

VIA E-MAIL

Applicant

COMMUNITY BY DESIGN
Attn: NARENDRA VARMA
25460 SW BAKER ROAD
SHERWOOD, OR 97140

Agent

STEVEN P. APPLGATE
3395 HUCKLEBERRY CT. S
SALEM, OR 97302

SUBJECT: Water Right Transfer Application T-11425

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11425. 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 I. Pedersen
Transfer Program Advisor

cc: File T-11425
Cole Beaman, District 18 Watermaster (via e-mail)
John Rehm, CWRE #69277 -> address: Rehm Geological, 5088 Summerfield Dr SE, Salem, OR 97306

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11425, Clackamas County)	PROPOSING APPROVAL OF CHANGES
)	IN PLACE OF USE AND ADDITIONAL
)	POINTS OF APPROPRIATION

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 24, 2012, Narendra Varma of Community by Design, LLC, filed an application to change the place of use and add additional points of appropriation under Certificates 80784 and 82930. The Department assigned the application number T-11425.
2. On February 28, 2013, the agent for the applicant clarified that the applicant proposed to use all three wells in any combination to irrigate the new place of use below in Finding of Fact #9 for Certificate 82930.
3. The first right to be transferred is as follows:
 - Certificate:** 80784 in the name of JACQUE E. PARSONS (perfected under Permit G-8857)
 - Use:** SUPPLEMENTAL IRRIGATION of 2.7 ACRES
 - Priority Date:** JUNE 6, 1980
 - Rate:** 14.3 GALLONS PER MINUTE (gpm)
 - 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 acre irrigated, and shall be further limited to a diversion of not to exceed 2.5

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.
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acre-feet per acre for each acre irrigated during the irrigation season of each year. The right shall be limited to any deficiency in the available supply of any prior right or the same land and shall not exceed the limitation allowed herein.

Source: A WELL within the ROCK CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
3 S	1 W	WM	4	NE SW	640 FEET SOUTH AND 1110 FEET WEST FROM THE CENTER OF SECTION 4

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
3 S	1 W	WM	4	NW SW	2.70

4. The point of appropriation described in Certificate 80784 describes the well as being 640 feet South and 1110 feet West from the Center of Section 4. However, information is available from the current map prepared by the applicant's Certified Water Right Examiner based on a recent field visit and subsequent survey indicating that the point of appropriation, being the same Well #1 as authorized in Certificate 82930, is actually further east approximately 50 feet and is located as follows:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
5 N	35 E	WM	2	NW NW	640 FEET SOUTH AND 1060 FEET WEST FROM THE CENTER OF SECTION 4

5. Transfer Application T-11425 proposes to change the place of use to:

Proposed Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
3 S	1 W	WM	4	NW SE	2.70

6. Transfer Application T-11425 also proposes to add two new additional points of appropriation, being approximately 750 feet southeast to Well #3, and approximately 1020 feet southeast to Well #2 located:

Proposed Points of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
3 S	1 W	WM	4	SE SW	Well #2 - 1400 FEET SOUTH AND 400 FEET WEST FROM THE CENTER OF SECTION 4
3 S	1 W	WM	4	NE SW	Well #3 - 1070 FEET SOUTH AND 470 FEET WEST FROM THE CENTER OF SECTION 4

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

Certificate: 82930 in the name of JACQUE E. PARSONS (perfected under Permit G-8857)

Use: SUPPLEMENTAL IRRIGATION of 13.3 ACRES

Priority Date: JUNE 6, 1980

Rate: 70.7 GALLONS PER MINUTE (gpm), BEING 1.1 GPM FROM WELL #1 and 69.6 GPM FROM WELL #2

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 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. The right shall be limited to any deficiency in the available supply of any prior right or the same land and shall not exceed the limitation allowed herein.

Source: TWO WELLS within the ROCK CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
3 S	1 W	WM	4	NE SW	Well #1 - 640 FEET SOUTH AND 1060 FEET WEST FROM THE CENTER OF SECTION 4
3 S	1 W	WM	4	SE SW	Well #2 - 1400 FEET SOUTH AND 400 FEET WEST FROM THE CENTER OF SECTION 4

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Acres	
					Well #1	Well #2
3 S	1 W	WM	4	NE SW	--	3.4
3 S	1 W	WM	4	NW SW	0.2	0.4
3 S	1 W	WM	4	SE SW	--	3.0
3 S	1 W	WM	4	NW SE	--	6.3

8. Transfer Application T-11425 proposes to change the place of use of the above described 13.3 acres to:

Proposed Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
3 S	1 W	WM	4	NE SW	4.1
3 S	1 W	WM	4	NW SW	0.2
3 S	1 W	WM	4	NW SE	9.0

9. Transfer Application T-11425 also proposes to add additional points of appropriation to allow Well #1, Well #2 and Well #3 to appropriate up to 70.7 gallons per minute, used in any combination between the three wells, to irrigate all of the above described lands at the new place of use. New additional Well #3 is approximately 750 feet southeast from Well #1 and is located as follows:

Additional Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
3 S	1 W	WM	4	NE SW	Well #3 - 1070 FEET SOUTH AND 470 FEET WEST FROM THE CENTER OF SECTION 4

10. The applicant has requested that the water uses evidenced by Certificates 80784 and 82930, after the proposed changes, be brought together again and issued under one new certificate to

confirm these changes. These two certificates represent portions of the same permit that were split in 2004 as a result of transfer application T-7023. Both of these certificates continue to be under one land ownership.

11. The Department agrees one certificate may be issued once the Claim of Beneficial Use comes in and proof is made according to the terms and conditions of the order approving T-11425. The combined certificate will allow appropriation of water from the three wells to be used in any combination up to a total of 85.0 gallons per minute, being the total combined rate from the two transferred certificates.
12. Notice of the application for transfer was published on June 5, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
13. On February 14, 2013, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11425 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 15, 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)

14. Water has been used within the five years prior to the submittal of Transfer Application T-11425 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.
15. Wells, pumps, 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-11425.
16. The 2.7 acre portion of transferred right under Certificate 80784 is currently supplemental to Certificate 50558, with a priority date of July 23, 1975, and is proposed to be moved to lands with the same (Certificate 50558) primary right. A 6.6 acre portion of the 13.3 acres under Certificate 82930 is currently supplemental to Certificate 22991, with a priority date of March 17, 1950, and the other 6.7 acre portion is currently supplemental to Certificate 50558, and is proposed to be moved to lands split between the two primaries. No regulation takes place annually on these primary water rights and the primaries are located entirely on the applicant's land.
17. With the similarity in priority dates between the water rights, the primary rights have "similar reliability," in compliance with OAR 690-380-2240 (5). Thus, the proposed transfer will not result in enlargement of the ground water rights proposed for transfer.
18. The proposed changes would not result in injury to other water rights.

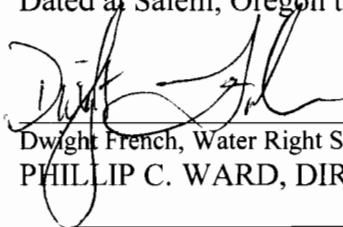
Determination and Proposed Action

The changes in place of use and additional points of appropriation proposed in Transfer Application T-11425 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-11425 is approved, the final order will include the following:

- 1. The changes in place of use and additional points of appropriation proposed in application T-11425 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 80784 and 82930 any related decree.*
- 3. Water right Certificates 80784 and 82930 are cancelled.*
- 4. The quantity of water diverted at the new additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.*
- 5. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
- 6. The former place of use of the transferred rights shall no longer receive water under the rights.*
- 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 changes and full beneficial use of the water.*
- 8. After satisfactory proof of beneficial use is received, the Department shall consider issuing a new single certificate confirming both of the rights transferred.*

Dated at Salem, Oregon this 18 day of March, 2013.



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

This Preliminary Determination was prepared by Kelly Starnes. If you have questions about the information in this document, you may reach me at 503-986-0886 or Patrick.K.Starnes@wrdd.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.