



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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May 20, 2013

Applicant

KEN AND CAROL FACKLER
P.O. BOX 316
MORA, MN 55051

Agent

MICHELE W. SIMS
PO BOX 751
SISTERS, OR 97759

SUBJECT: Water Right Transfer Application T-11384

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11384. 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 Bend Bulletin 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@wrdd.state.or.us if I may be of assistance.

Sincerely,

Dorothy I. Pedersen
Transfer Program Advisor

cc: T-11384
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)

encs



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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11384, Deschutes County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT 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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MORA, MINNESOTA 55051

Agent

MICHELE SIMS, FRED AST & ASSOC.
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SISTERS, OR 97759

Findings of Fact

1. On March 27, 2012, Ken and Carol Fackler filed an application to add an additional point of appropriation under a portion of Certificate 83456. The Department assigned the application number T-11384.
2. Notice of the application for transfer was published on April 3, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 11, 2013, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11384 to the applicants and agent. The draft Preliminary Determination cover letter set forth a deadline of May 10, 2013, for the applicant to respond. On April 17, 2013, Michele Sims, agent for the applicant, requested via e-mail, for the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate the applicants are authorized to pursue the transfer.
4. On April 29, 2013, the Department discovered the measurement device condition requirement was missing from the draft of the Preliminary Determination. On April 30, 2013, the Department notified the applicant and agent of the needed condition to be incorporated into any approval of the transfer. On May 1, 2013, the applicants contacted the

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.

Department by phone and approved the needed condition for installation of a totalizing flow-meter at the new point of appropriation, and requested to move forward.

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

Certificate: in the name of JAYMIE KACZMAREK, JERRY & JEANNIE FREUND, JOSEPH ANGEL, LEON & LYNN DENSE, NORTHWEST FARM CREDIT SERVICES, H. RICHARD & PAMALYNN STEINFELD, DONALD NEIL THOMAS AND THOMAS K. & JANICE E. WIMBERLY, (perfected under Permit G-12705)

Use: IRRIGATION of 45.5 ACRES

Priority Date: AUGUST 31, 1992

Rate: 0.57 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 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: WELL #4 within the DESCHUTES RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
16 S	11 E	WM	9	NW NE	WELL #4 - 120 FEET SOUTH AND 300 FEET EAST FROM THE N1/4 CORNER OF SECTION 9

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
16 S	11 E	WM	4	NE SW	0.4
16 S	11 E	WM	4	SE SW	21.3
16 S	11 E	WM	4	NW SE	2.1
16 S	11 E	WM	4	SW SE	15.5
16 S	11 E	WM	9	NW NE	2.1
16 S	11 E	WM	9	NE NW	4.1

6. Transfer Application T-11384 proposes to add an additional point of appropriation north of Well #4 approximately 1400 feet:

Proposed Additional point Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
16 S	11 E	WM	4	NW SE	WELL #3 - 1331 FEET NORTH AND 516 FEET EAST FROM THE N1/4 CORNER OF SECTION 9

Transfer Review Criteria (OAR 690-380-4010)

7. 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.

8. A well, 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-11384.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.
11. The proposed, additional point of appropriation produces water from the same source (aquifer) as the original Well#4 and complies with the requirements of OAR 690-380-2110 (2).
12. All other application requirements are met.

Determination and Proposed Action

The additional point of appropriation proposed in Transfer Application T-11384 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.

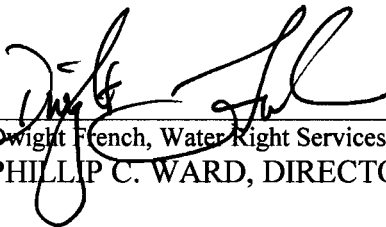
If Transfer Application T-11384 is approved, the final order will include the following:

1. *The change in additional point of appropriation proposed in application T-11384 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 83456 and any related decree.*
3. *Water right certificate 83456 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 additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
5. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
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 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 meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.

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 17 day of May, 2013.


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

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@wrđ.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.