



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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July 15, 2012

ETZEL FAMILY TRUST
14271 FERN RIDGE ROAD
STAYTON, OR 97383

SUBJECT: Water Right Transfer Application T-11319

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11319. 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 503-986-0886 or Patrick.K.Starnes@wrds.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Specialist

cc: File T-11319
Mike McCord, District 16 Watermaster (*via e-mail*)
Jim Schuette, Agent/CWRE for the applicant (*via e-mail*)

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

| | | |
|---------------------------------------|---|----------------------------|
| In the Matter of Transfer Application |) | PRELIMINARY DETERMINATION |
| T-11319, Marion County |) | PROPOSING APPROVAL OF A |
| |) | CHANGE IN PLACE OF USE AND |
| |) | PARTIAL CANCELLATION OF A |
| |) | WATER RIGHT |

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. ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

ETZEL FAMILY TRUST
14271 FERN RIDGE ROAD
STAYTON, OR 97383

Findings of Fact

Background

1. On November 21, 2011, ETZEL FAMILY TRUST filed an application to change the place of use under Certificate 35369. The Department assigned the application number T-11319.
2. On August 28, 2012, the applicant amended the application and submitted an affidavit of partial cancellation.
3. The portion of the right to be transferred is as follows:
 - Certificate:** 35369 in the name of ETZEL BROTHERS (perfected under Permit G-2147)
 - Use:** IRRIGATION OF 20.2 ACRES
 - Priority Date:** MAY 10, 1962
 - Rate:** 0.152 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

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

Source: ETZEL BROTHERS WELL 2 within the MILL CREEK BASIN

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|---|
| 9 S | 1 W | WM | 2 | SE SE | ETZEL BROTHERS WELL 2 - 850 FEET NORTH AND 1440 FEET EAST FROM THE S¼ CORNER OF SECTION 2 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 9 S | 1 W | WM | 1 | NW SW | 3.50 |
| 9 S | 1 W | WM | 1 | SW SW | 8.01 |
| 9 S | 1 W | WM | 2 | SW SE | 0.34 |
| 9 S | 1 W | WM | 2 | SE SE | 8.35 |
| TOTAL | | | | | 20.20 |

4. Transfer Application T-11319 also proposes to change the place of use of the right to:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 9 S | 1 W | WM | 2 | NW SE | 6.70 |
| 9 S | 1 W | WM | 2 | SW SE | 13.50 |
| TOTAL | | | | | 20.20 |

5. Notice of the application for transfer was published on November 22, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On September 6, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11319 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 8, 2012, for the applicant to respond.
7. On September 18, 2012, the agent for the applicant requested a 60 day administrative hold on the processing of Transfer Application T-11319. The hold expires December 7, 2012.
8. On November 19, 2012, the agent for the applicant requested an additional 120 day administrative hold on Transfer Application T-11319. The hold expires April 7, 2013.
9. On April 8, 2013, the agent for the applicant requested an additional 90 day administrative hold on Transfer Application T-11319. The hold expires July 8, 2013.
10. On July 11, 2013, 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 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.
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-11319.
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.

Partial Cancellation of a Water Right

1. On August 28, 2012, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Larry Etzel, authorized agent for the Etzel Family Trust. The right to be cancelled is as follows:

Certificate: 35369 in the name of ETZEL BROTHERS (perfected under Permit G-2147)
Use: IRRIGATION OF 3.13 ACRES
Priority Date: MAY 10, 1962
Rate: 0.024 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: ETZEL BROTHERS WELL 2 in the MILL CREEK BASIN

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|---|
| 9 S | 1 W | WM | 2 | SE SE | ETZEL BROTHERS WELL 2 - 850 FEET NORTH AND 1440 FEET EAST FROM THE S¼ CORNER OF SECTION 2 |

Authorized Place of Use to be Cancelled:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 9 S | 1 W | WM | 1 | SW SW | 0.12 |
| 9 S | 1 W | WM | 2 | SW SE | 0.06 |
| 9 S | 1 W | WM | 2 | SE SE | 2.95 |
| TOTAL | | | | | 3.13 |

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-11319 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portion of the right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned portion of the right will be cancelled.

If Transfer Application T-11319 is approved, the final order will include the following:

- 1. The change in place of use proposed in Transfer Application T-11319 is approved. The portion of the right that has been abandoned is cancelled.*
- 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 35369 and any related decree.*
- 3. Water right certificate 35369 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.*
- 4. The former place of use of the transferred right shall no longer receive water under the right.*
- 5. 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.*
- 6. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 16 day of July, 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@wrд.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.