



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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December 24, 2013

VIA E-MAIL

Applicant

HAVEL PLACE LLC
5715 ANDERSON RD
AUMSVILLE, OR 97325

SUBJECT: Water Right Transfer Application T-11644

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11644. 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 Sarah.A.Henderson@wrд.state.or.us, if I may be of assistance.

Sincerely,

Sarah Henderson
Transfer Specialist
Transfer and Conservation Section

cc: T-11644
Mike L. McCord, District 16 Watermaster (*via e-mail*)
James M. Schuette, Agent for the applicant (*via e-mail*)
Bureau of Reclamation (1150 N Curtis Rd., Ste. 100, Boise, ID, 83706)

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

In the Matter of Transfer Application) **PRELIMINARY DETERMINATION**
T-11644, Linn County) **PROPOSING APPROVAL OF A**
) **CHANGE IN PLACE OF USE**

Authority

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, 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

1. On August 2, 2013, HAVEL PLACE LLC filed an application to change the place of use under Certificate 54059. The Department assigned the application number T-11644.
2. Notice of the application for transfer was published on August 6, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 18, 2013, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11644 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 18, 2014, 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.
4. The portion of the right to be transferred is as follows:
 - Certificate:** 54059 in the name of DOUGLAS A. AND JUDY P. NIELSEN (perfected under Permit S-39888)
 - Use:** IRRIGATION of 10.7 ACRES
 - Priority Date:** MARCH 12, 1975
 - Rate:** 0.13 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 from direct flow and shall be further limited to a

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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diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year, from direct flow and storage from reservoir constructed under Permit R-1625, and is subject to the terms and conditions of Contract 5-07-10-W0540 or a satisfactory replacement between the Bureau of Reclamation and the applicant, a copy of which is on file in the records of the Water Resources Department.

Sources: NORTH SANTIAM RIVER (and DETROIT RESERVOIR constructed under Permit R-1625), tributaries to the SANTIAM RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
10 S	5 E	WM	7	SW NW		POD NO. 1 - DETROIT RESERVOIR
9 S	2 E	WM	22	SE SW	2	POD NO. 2 - 120 FEET NORTH AND 610 FEET EAST FROM THE NW CORNER, JOHN B. POTTER DLC 37

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
9 S	2 E	WM	27	NW NE	37	4.0
9 S	2 E	WM	27	NE NW	37	6.7
					Total	10.7

5. Transfer Application T-11644 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
9 S	2 E	WM	22	SW SE	37	6.6
9 S	2 E	WM	27	NW NE	37	3.6
9 S	2 E	WM	27	NE NW	37	0.5
					Total	10.7

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

6. 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.
7. 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-11644.
8. The proposed change would not result in enlargement of the right.
9. 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-11644 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-11644 is approved, the final order will include the following:

- 1. The change in place of use proposed in Transfer Application T-11644 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 54059 and any related decree.*
- 3. Water right certificate 54059 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 each existing point of diversion.*
 - b. The water user shall maintain the meters or measuring devices in good working order.*
 - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
- 5. The former place of use of the transferred 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, 2015**. 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 26 day of December 2013.


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

This Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-986-0890 or Sarah.A.Henderson@ wrd.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.