



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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Salem, OR 97301-1271

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January 10, 2014

VIA E-MAIL

METRO

600 NE GRAND AVE

PORTLAND, OR 97232

SUBJECT: Water Right Transfer Application T-11517

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11517. 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 Daily Journal of Commerce 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 last date of newspaper publication.

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@ wrd.state.or.us](mailto:Sarah.A.Henderson@ wrd.state.or.us) if I may be of assistance.

Sincerely,

Sarah Henderson

Transfer Specialist

Transfer and Conservation Section

cc: T-11517  
District 20 Watermaster (*via e-mail*)  
Keith R. Jehnke, Agent for the applicant (*via e-mail*)

encs



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

In the Matter of Transfer Application            )  
T-11517, Multnomah County                    )  
                                                                  )  
                                                                  )    **PRELIMINARY DETERMINATION  
PROPOSING APPROVAL OF AN  
ADDITIONAL POINT OF  
APPROPRIATION**

**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.

**Applicant**

METRO  
ATTN: LYDIA NEILL  
600 NE GRAND AVE  
PORTLAND, OR 97232

**Findings of Fact**

1. On December 31, 2012, METRO filed an application for an additional point of appropriation under Certificate 83230. The Department assigned the application number T-11517.
2. Notice of the application for transfer was published on January 8, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The transfer application description of the authorized place of use incorrectly described the ¼ ¼ location of the acres. However, the map identified the correct ¼ ¼ locations. After communicating with the applicant through email, they provided clarification to the corrections sent to them, via email.
4. On December 9, 2013, the Department mailed a copy of the Draft Preliminary Determination proposing to approve Transfer Application T-11517 to the applicant. The Draft Preliminary Determination cover letter set forth a deadline of January 10, 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.

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.

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

**Certificate:** 83230 in the name of COUNTY OF MULTNOMAH (perfected under Permit G-10490)  
**Use:** IRRIGATION of 88.9 ACRES  
**Priority Date:** MAY 1, 1985  
**Rate:** 1.1 CUBIC FEET 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** A WELL within the WILLAMETTE BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	2 E	WM	35	SW NE	POA NO. 1 - 90 FEET NORTH AND 100 FEET EAST FROM THE C 1/4 CORNER OF SECTION 35

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	2 E	WM	35	NE NE	14.00
1 N	2 E	WM	35	NW NE	1.00
1 N	2 E	WM	35	SW NE	16.30
1 N	2 E	WM	35	SE NE	14.60
1 N	2 E	WM	36	NE NW	7.40
1 N	2 E	WM	36	NW NW	16.80
1 N	2 E	WM	36	SW NW	13.80
1 N	2 E	WM	36	SE NW	5.00

6. Transfer Application T-11517 proposes to add an additional point of appropriation approximately 3996 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	2 E	WM	36	SE NW	POA NO. 2 - 165 FEET NORTH AND 84 FEET EAST FROM THE C 1/16 OF SECTION 36

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

- Water has been used within the five-year period prior to submittal of the transfer application 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.
- 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-11517.

9. Provided totalizing flow meters are installed as conditioned below, the proposed change would not result in enlargement of the right.
10. If conditioned as followed, the proposed change would not result in injury to other water rights.

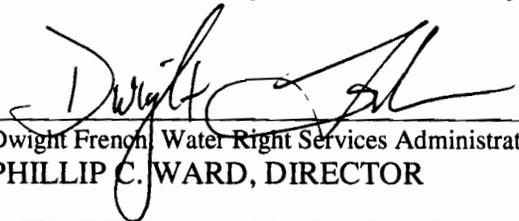
### **Determination and Proposed Action**

The additional point of appropriation proposed in Transfer Application T-11517 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-11517 is approved, the final order will include the following:*

1. *The additional point of appropriation proposed in Transfer Application T-11517 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 83230 and any related decree.*
3. *Water right certificate 83230 is cancelled.*
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 diversion.*
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 each point of appropriation (new and existing).*
  - 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.*
6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
7. *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.*
8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 10 day of January, 2014.

  
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@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.