



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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January 31, 2014

KEITH DITCHEN and JUSTIN DITCHEN  
9712 NUSOM ROAD NE  
SILVERTON, OR 97381

SUBJECT: Water Right Transfer Application T-11523

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11523. 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 Silverton Appeal 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 [Tracy.L.Fox@ wrd.state.or.us](mailto:Tracy.L.Fox@ wrd.state.or.us) or 503 986-0827 if I may be of assistance.

Sincerely,

Ms. Tracy Fox  
Transfer Specialist  
Transfer and Conservation Section

cc: T-11523  
Mike L. McCord, District 16 Watermaster (*via e-mail*)  
James M. Schuette, CWRE and Agent for the applicant (*via e-mail*)  
enclosure

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11523, Marion 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.

**Applicants**

KEITH DITCHEN AND JUSTIN DITCHEN  
9712 NUSOM ROAD NE  
SILVERTON, OR 97381

**Findings of Fact**

1. On January 14, 2013, KEITH DITCHEN AND JUSTIN DITCHEN filed an application for an additional point of appropriation under Certificate 55544. The Department assigned the application number T-11523.
2. Notice of the application for transfer was published on January 22, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 26, 2013, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11523 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of December 26, 2013, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
4. The applicants requested that the date that full beneficial use of the water shall be made, be changed from "on or before October 1, 2015," to "on or before October 1, 2016." That amendment was made in this Preliminary Determination.

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

**Certificate:** 55544 in the name of EDWARD A. HARI (perfected under Permit G-7867)  
**Use:** IRRIGATION of 22.2 ACRES  
**Priority Date:** DECEMBER 1, 1977  
**Rate:** 0.278 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:** A WELL within the LITTLE PUDDING RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
7 S	2 W	WM	2	SE NW	58	140 FEET NORTH AND 1260 FEET WEST FROM THE CENTER OF SECTION 2

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
7 S	2 W	WM	2	NW NW	84	3.4
7 S	2 W	WM	3	NE NE	84	18.8

6. Transfer Application T-11523 proposes an additional point of appropriation approximately 3,560 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
7 S	2 W	WM	3	NW NE	84	540 FEET SOUTH AND 1500 FEET WEST FROM THE NE CORNER OF SECTION 3

**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 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-11523.
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. All other application requirements are met.

## **Determination and Proposed Action**

The additional point of appropriation proposed in Transfer Application T-11523 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-11523 is approved, the final order will include the following:*

1. *The additional point of appropriation proposed in Transfer Application T-11523 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 55544 and any related decree.*
3. *Water right certificate 55544 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 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 at each 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.*
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, 2016**. 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 29 day of January 2014.

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

This Preliminary Determination was prepared by Tracy Fox. If you have questions about the information in this document, you may reach me at 503 986-0827 or Tracy.L.Fox@ wrd.state.or.us.

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