



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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March 18, 2014

Applicant

L. WAYNE JUDD
PO BOX 2955
LA PINE, OREGON 97739

Agent

JOHN SHORT
PO BOX 1830
BEND, OREGON 97709

Applicant

MICHELLE Y. JUDD
PO BOX 1525
LA PINE, OREGON 97739

SUBJECT: Water Right Transfer Application T-11488

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11488. 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@wrд.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application file T-11488
Jeremy T. Giffin, District 11 Watermaster (via e-mail)
John A. Short, Agent for the applicant (via e-mail)
Gary L. DeJarnatt, CWRE #33 (address: 207385 Double Peaks Dr., Bend, OR 97701-8715)

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

In the Matter of Transfer Application)
T-11488, Deschutes County)
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)
)
)

PRELIMINARY DETERMINATION
PROPOSING AN ADDITIONAL POINT
OF APPROPRIATION 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.

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Findings of Fact

1. On November 9, 2012, Wayne Judd and Michelle Judd, filed an application for an additional point of appropriation under Certificate 64253. The Department assigned the application number T-11488.
2. Notice of the application for transfer was published on November 20, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 24, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11488 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 25, 2014, for the applicants to respond. The agent, authorized to speak on behalf of the applicants, requested that 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 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 portion of the right to be transferred is as follows:

Certificate: 64253 in the name of TIMOTHY D. JUDD (perfected under Permit G-10279)
Use: IRRIGATION of 4.5 ACRES
Priority Date: SEPTEMBER 13, 1983
Rate: 0.056 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL within the LITTLE DESCHUTES RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	9 E	WM	35	NE SE	2340 FEET NORTH AND 370 FEET WEST FROM THE SE CORNER OF SECTION 35

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
22 S	9 E	WM	35	SE NE	0.4
22 S	9 E	WM	35	NE SE	4.1

5. Transfer Application T-11488 proposes an additional point of appropriation, approximately 85 feet west of the authorized point of appropriation, to a well located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	9 E	WM	35	NE SE	Well No. 2 - 320 FEET SOUTH AND 430 FEET WEST FROM THE E ¹ / ₄ CORNER OF SECTION 35

Transfer Review Criteria (OAR 690-380-4010)

6. Pursuant to OAR 690-380-2110(2), the Department has made a finding, based on the information provided, that the proposed additional point of appropriation (DESC 55512) develops the same (source) aquifer as that of the original authorized well (DESC 7849).
7. Water has been used within the last five years prior to the submittal of Transfer Application T-11488 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. However, the applicants have voluntarily requested the cancellation of a portion of the water right due to non-use on non-irrigable lands and is further described in Finding No. 12 below.

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-11488.
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.

Partial Cancellation of a Water Right

12. On February 3, 2014, the Department received voluntary cancellation affidavits from L. Wayne Judd and Michelle Y. Judd, landowners, requesting to cancel a portion of the water right on their property no longer being irrigated. The voluntary cancellation affidavit meets the requirements of ORS 540.621. This request is to cancel the 0.5 acres, for the use of 0.006 cubic foot per second from a well within the Little Deschutes River basin. The portion of the water right to be cancelled is described as follows:

Certificate: 64253, in the name of TIMOTHY D. JUDD (perfected under Permit G-10279)
Use: IRRIGATION of 0.5 ACRES
Priority Date: SEPTEMBER 13, 1983
Rate: 0.006 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL within the LITTLE DESCHUTES RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	9 E	WM	35	NE SE	2340 FEET NORTH AND 370 FEET WEST FROM THE SE CORNER OF SECTION 35

Cancelled Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
22 S	9 E	WM	35	NE SE	0.5

Determination and Proposed Action

The additional point of appropriation proposed in Transfer Application T-11488 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 Water Right Certificate 64253 should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned right will be cancelled.

If Transfer Application T-11488 is approved, the final order will include the following:

- 1. The additional point of appropriation proposed in Transfer Application T-11488 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 64253 and any related decree.*
- 3. Water right certificate 64253 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.*
- 4. The quantity of water diverted at the new 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 as the original point of appropriation.*
- 6. 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.*
- 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 14 day of March 2014.


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@ 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.