



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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March 17, 2014

VIA E-MAIL

DUTCH PACIFIC PROPERTIES INC.
PO BOX 3500
SISTERS, OR 97759

SUBJECT: Water Right Transfer Application T-11520

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11520. 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 Bend Bulletin 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 Department's notice *or* 30 days after the last date of newspaper publication, whichever is later.

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 or 503 986-0827 if I may be of assistance.

Sincerely,

Ms. Tracy Fox
Transfer Specialist
Transfer and Conservation Section

cc: T-11520
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)
Michele W. Sims, CWRE and Agent for the applicant (*via e-mail*)
John Zicker, Receiving Landowner (*via e-mail*)

enclosures

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

In the Matter of Transfer Application)
T-11520, Deschutes County)
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**PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A
CHANGE IN POINT OF
APPROPRIATION AND PLACE OF
USE AND 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

DUTCH PACIFIC PROPERTIES INC.
PO BOX 3500
SISTERS, OR 97759

Receiving Landowner

JOHN ZICKER
16025 FOOTHILL LANE
SISTERS, OR 97759

Findings of Fact

1. On January 3, 2013, DUTCH PACIFIC PROPERTIES INC. filed an application to change the point of appropriation and to change the place of use under Certificate 85693. The Department assigned the application number T-11520.
2. John Zicker is the receiving landowner who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on January 15, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. Transfer Application T-11519 was filed January 3, 2013, by Dutch Pacific Properties Inc. This transfer modifies the same right proposed in T-11520. Certificate 85693 shall be canceled after both transfer applications are processed.
5. On December 11, 2013, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11520 to the applicant. The draft Preliminary

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.

Determination cover letter set forth a deadline of January 15, 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.

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

Certificate: 85693 in the name of DUTCH PACIFIC PROPERTIES INC. (perfected under Permit G-13492)
Use: IRRIGATION of 1.8 ACRES
Priority Date: MARCH 18, 1998
Rate: 0.22 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, is limited to a diversion of 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 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL within the WHYCHUS CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	10 E	WM	34	NW NW	WELL 1: 326 FEET NORTH AND 180 FEET WEST FROM THE C1/4 CORNER OF SECTION 4

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	10 E	WM	34	SE NW	1.8

7. Transfer Application T-11520 proposes to move the authorized point of appropriation approximately 1.3 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	10 E	WM	34	NW NW	WELL 2: 879 FEET SOUTH AND 403 FEET EAST FROM THE NW CORNER, SECTION 4

8. Transfer Application T-11520 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	10 E	WM	34	NW NW	1.8

Transfer Review Criteria (OAR 690-380-4010)

9. 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.

10. 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-11520.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

Cancellation of a Water Right

On January 3, 2013, an affidavit certifying that an entire water right has been abandoned and requesting cancellation of the right was received from Shane Lundgren. The right to be cancelled is as follows:

Certificate: 50477 in the name of S. S. JOHNSON COMPANY (confirmed by Squaw Creek [Whychus Creek], 1914 decree)
Use: IRRIGATION of 0.12 ACRE
Priority Date: 1885
Rate: 0.002 CUBIC FOOT PER SECOND
Source: SQUAW CREEK, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	9	NW SW	SMITH DITCH

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	4	SE NW	0.12

Determination and Proposed Action

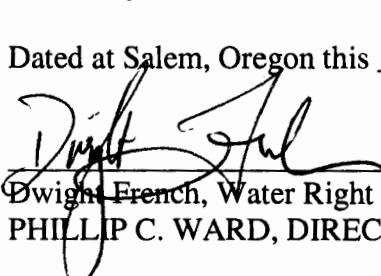
The change in point of appropriation and change in place of use proposed in Transfer Application T-11520 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned right will be cancelled.

If Transfer Application T-11520 is approved, the final order will include the following:

1. *Water right certificate 50477 is cancelled.*
2. *The change in point of appropriation and change in place of use proposed in Transfer Application T-11520 are approved.*

3. *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 85693 and any related decree.*
4. *Water right certificates 85693 is modified and will be canceled upon approval or denial of T-11519.*
5. *The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.*
6. *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 new point of appropriation.*
 - b. *The water user shall maintain the meter or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring devices; provided however, where the meter or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
7. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
8. *The former place of use of the transferred right shall no longer receive water under the right.*
9. *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 receiving landowner to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.*
10. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 17 day of March 2014.


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@wr.d.state.or.us.

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