



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
503-986-0900  
FAX 503-986-0904

July 2, 2014

VIA E-MAIL

KEN & BAMBI FLETCHER  
13290 BUENA VISTA RD  
INDEPENDENCE, OR 97351

SUBJECT: Water Right Transfer Application T-11711

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11711. 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.

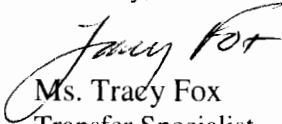
A public notice is being published in the Department's weekly publication simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing 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 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-11711  
District 16 Watermaster (via e-mail)  
James Schuette, CWRE #117 (via e-mail)  
enclosure

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

In the Matter of Transfer Application            )    PRELIMINARY DETERMINATION  
T-11711, Polk County                            )    PROPOSING APPROVAL OF A  
  )    CHANGE IN POINT OF DIVERSION

**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**

KEN AND BAMBI FLETCHER  
13290 BUENA VISTA RD  
INDEPENDENCE, OR 97351

**Findings of Fact**

1. On January 3, 2014, KEN AND BAMBI FLETCHER filed an application to change the point of diversion under Certificate 42036. The Department assigned the application number T-11711.
2. Notice of the application for transfer was published on January 14, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 14, 2014, the Department contacted the applicant and the applicant’s CWRE, James Schuette, by written correspondence to notify the applicant and the applicant’s CWRE of the deficiencies in the application. The transfer map was returned to James Schuette for minor deficiencies. Within the application, there was a discrepancy of the location of the proposed point of diversion; the Table describing the portion of the water right being changed needed to be corrected and the Land Use Form needed to be completed. The Department requested that the deficiencies be resolved by April 17, 2014. The time to respond was later extended to May 22, 2014. The Department determined that the Land Use Form was acceptable as is and did not need to be amended. On May 2, 2014, the amended pages of the application correcting the deficiencies were received by the Department. On May 23, 2014, the completed map was received by the Department.

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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4. On June 9, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11711 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of July 9, 2014, 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.
5. The portion of the right to be transferred is as follows:

**Certificate:** 42036 in the name of DAVID & GLADYS HAGERBAUMER (perfected under Permit S-33749)  
**Use:** IRRIGATION of 42.1 ACRES  
**Priority Date:** JULY 12, 1968  
**Rate:** 0.53 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:** LUCKIAMUTE RIVER, tributary of WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
10 S	4 W	WM	2	NW NW	10	780 FEET SOUTH AND 2700 FEET EAST FROM THE NE CORNER OF HODGES DLC 53

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
9 S	4 W	WM	34	SE SW	4	0.8
9 S	4 W	WM	34	SE SW		20.3
9 S	4 W	WM	34	SW SE		19.3
9 S	4 W	WM	35	SW SW		1.7

6. Transfer Application T-11711 proposes to move the authorized point of diversion approximately 1040 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	4 W	WM	35	SW SW	440 FEET NORTH AND 390 FEET EAST FROM THE SE CORNER OF SECTION 34

7. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

8. The right was leased instream under IL-1008 during the period August 6, 2009 to September 30, 2009, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
9. 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-11711.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

**Determination and Proposed Action**

The change in point of diversion proposed in Transfer Application T-11711 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.

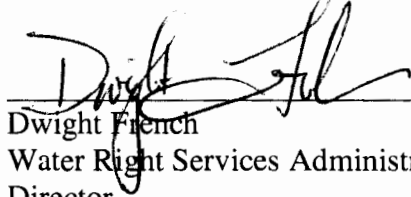
*If Transfer Application T-11711 is approved, the final order will include the following:*

1. *The change in point of diversion proposed in Transfer Application T-11711 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 42036 and any related decree.*
3. *Water Right Certificate 42036 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 new point of diversion 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 diversion at each new point of diversion.*
  - 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. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

*The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.*

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   1   day of July, 2014.



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Dwight French  
Water Right Services Administrator, for  
Director  
Oregon Water Resources Department

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@wrdd.state.or.us.

Protests should be addressed to the Water Rights Services Division, Oregon Water Resources Department, 725 Summer Street, Suite A, Salem, OR 97301-1266.