



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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

July 16, 2014

DOG RIVER ORCHARDS LLC  
ATTN: GORHAM BLAINE  
PO BOX 445  
PARKDALE, OR 97041

SUBJECT: Water Right Transfer Application T-11718

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11718. 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@ wrd.state.or.us](mailto:Patrick.K.Starnes@ wrd.state.or.us) if I may be of assistance.

Sincerely,

Kelly Starnes  
Transfer Program Analyst  
Transfer and Conservation Section

cc: Transfer Application File T-11718  
Bob Wood, District 3 Watermaster (*via e-mail*)  
Larry Toll, Agent/CWRE for the applicant (*via e-mail*)

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11718, Wasco County	)	PROPOSING APPROVAL OF
	)	CHANGES IN PLACE OF USE

**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**

DOG RIVER ORCHARDS, LLC  
P.O. BOX 445  
PARKDALE, OR 97041

**Findings of Fact**

1. On January 10, 2014, Gorham Blaine, Managing member of Dog River Orchards, LLC filed an application to change the places of use under Certificates 81335, 81470 and 80560. The Department assigned the application number T-11718.
2. On May 29, 2014, the agent for the applicant requested a date for completion of the transfer be extended to October 1, 2016 to guarantee adequate time to complete the project. The Department approved and extended the date by which the applicant must make full beneficial use of water under the terms and conditions of this transfer to October 1, 2016.
3. Notice of the application for transfer was published on January 28, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On May 29, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11718 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 29, 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 first right is as follows:

**Certificate:** 81470 in the name of LOST AND BOULDER DITCH CO. (confirmed by Decree of the Circuit Court of the State of Oregon for Wasco County, White River Decree (F))

**Use:** IRRIGATION OF 0.3 ACRE

**Priority Date:** 1911

**Rate:** 0.007 CUBIC FOOT PER SECOND (CFS) UP TO JULY 1, AND 0.0035 CFS THEREAFTER

**Limit/Duty:** The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed ONE-FORTIETH OF A SECOND FOOT PER ACRE up to July 1 of each year and thereafter not to exceed ONE-EIGHTIETH OF A SECOND FOOT PER ACRE, except in the case of rotation, further limited to a maximum diversion of 1.0 ACRE-FOOT PER ACRE during any 30 day period up to July 1 of each year and not to exceed 3.0 ACRE-FEET PER ACRE during any irrigation season

**Sources:** LOST AND BOULDER CREEKS, tributaries of the WHITE RIVER

**Authorized Place of Use**

TRACT 2 IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acre
4 S	12 E	WM	34	NE SW	0.3

6. Transfer Application T-11718 proposes to change the place of use of the above described right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acre
4 S	12 E	WM	34	NE SE	0.3

7. The portion of the layered supplemental irrigation right to the right described in Finding No. 5 is as follows:

**Certificate:** 80560 in the name of LOST AND BOULDER DITCH CO. (perfected under Permit S-25326)

**Use:** SUPPLEMENTAL IRRIGATION OF 0.3 ACRE

**Priority Date:** JANUARY 27, 1958

**Rate:** 0.002 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 ONE-FORTIETH 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:** FOREST CREEK, a tributary of the WHITE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	10 E	WM	27	SW SW	195 FEET NORTH AND 256 FEET EAST FROM THE SW CORNER OF SECTION 27

**Authorized Place of Use:**

TRACT 2 SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acre
4 S	12 E	WM	34	NE SW	0.3

8. Transfer Application T-11718 proposes to change the place of use of the above described right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acre
4 S	12 E	WM	34	NE SE	0.3

9. The portion of the second right is as follows:

**Certificate:** 81335 in the name of LOST AND BOULDER DITCH CO. (confirmed by Decree of the Circuit Court of the State of Oregon for Wasco County, White River Decree (F))

**Use:** IRRIGATION OF 19.8 ACRES, DOMESTIC AND STOCK USE

**Priority Date:** 1901

**Rate:** 0.26 CUBIC FEET PER SECOND, MEASURED AT OR NEAR THE DIVERSION BOX AT THE HEAD OF THE MAIN LATERALS OF SAID COMPANY SITUATED IN THE NE¼ SW¼, SECTION 10, T 5 S, R 11 E, W.M.

**Sources:** LOST AND BOULDER CREEKS, tributaries of the WHITE RIVER

**Authorized Place of Use:**

TRACT 1 IRRIGATION, DOMESTIC, AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	34	NE SW	0.9
4 S	12 E	WM	34	NW SW	18.9
TOTAL					19.8

10. Transfer Application T-11718 proposes to change the place of use of the above described right to:

IRRIGATION, DOMESTIC, AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	34	NW SW	1.7
4 S	12 E	WM	34	NE SE	17.0
4 S	12 E	WM	34	SE SE	1.1
TOTAL					19.8

11. The portion of the layered supplemental irrigation right to the right described in Finding No. 9 is as follows:

**Certificate:** 80560 in the name of LOST AND BOULDER DITCH CO. (perfected under Permit S-25326)

**Use:** SUPPLEMENTAL IRRIGATION OF 19.8 ACRES

**Priority Date:** JANUARY 27, 1958

**Rate:** 0.161 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 ONE-FORTIETH 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:** FOREST CREEK, a tributary of the WHITE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	10 E	WM	27	SW SW	195 FEET NORTH AND 256 FEET EAST FROM THE SW CORNER OF SECTION 27

**Authorized Place of Use:**

TRACT 1 SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	34	NE SW	0.9
4 S	12 E	WM	34	NW SW	18.9
TOTAL					19.8

12. Transfer Application T-11718 proposes to change the place of use of the above described right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	12 E	WM	34	NW SW	1.7
4 S	12 E	WM	34	NE SE	17.0
4 S	12 E	WM	34	SE SE	1.1
TOTAL					19.8

13. Certificates 81335 and 81470 do not describe the location of the points of diversion for the water use. However, information is available from the USGS topographic quadrangle map and a Department survey map (T. Paul/1983) based on a field survey indicating that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	10 E	WM	26	SE SW	1310 FEET NORTH AND 1740 FEET EAST FROM THE SW CORNER OF SECTION 26
4 S	10 E	WM	27	NE SE	2340 FEET NORTH AND 350 FEET WEST FROM THE SE CORNER OF SECTION 27

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

14. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the records that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
15. Diversion structures, ditches and a delivery system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11718.
16. The proposed changes would not result in enlargement of the rights.
17. The proposed changes would not result in injury to other water rights.

**Determination and Proposed Action**

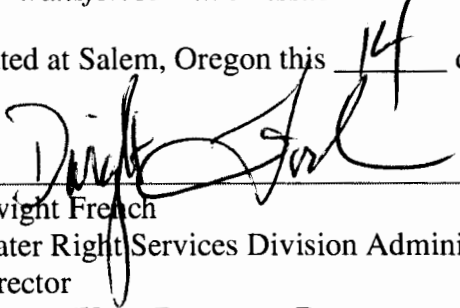
The changes in place of use proposed in Transfer Application T-11718 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-11718 is approved, the final order will include the following:*

1. *The changes in place of use proposed in Transfer Application T-11718 are 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 Certificates 81335, 81470 and 80560 and any related decree.*
3. *Water right certificates 81335, 81470 and 80560 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.*
4. *The former place of use of the transferred rights shall no longer receive water under the rights.*
5. *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 changes and full beneficial use of the water.*

6. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 14 day of July, 2014.

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

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@wrp.state.or.us](mailto:Ken.D.Dowden@wrp.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.