



# 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

September 12, 2014

**Applicant**

Andy Root  
524 Hwy 20 N  
Hines OR 97738

**Agent VIA E-MAIL**

Scott D. Montgomery  
All Points Engineering and Surveying  
P.O. Box 767  
Terrebonne OR 97760  
[scott@apeands.com](mailto:scott@apeands.com); [neecee@apeands.com](mailto:neecee@apeands.com)

**SUBJECT: Water Right Transfer Application T-11615**

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11615. 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 Burns Times Herald 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 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

Enclosures

cc: Transfer Application file T-11615  
JR Johnson, Watermaster District 10 (via e-mail)

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11615, Harney County	)	PROPOSING APPROVAL OF
	)	ADDITIONAL POINTS 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.

**Applicant**

ANDY ROOT  
524 HWY 20 N  
HINES, OR 97738

**Agent**

SCOTT D MONTGOMERY  
ALL POINTS ENGINEERING AND SURVEYING  
P.O. BOX 767  
TERREBONNE, OR 97760

**Findings of Fact**

1. On June 13, 2013, Andy Root filed an application for an additional point of appropriation under Certificate 88360. The Department assigned the application number T-11615.
2. Notice of the application for transfer was published on June 25, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 12, 2013, superseding Water Right Certificate 88868 was issued to correct scrivener's errors in Certificate 88360.
4. On October 31, 2013, the applicant's agent requested that the completion date be extended until October 1, 2016.
5. On October 31, 2013, the Department sent a copy of the Draft Preliminary Determination proposing to approve Transfer Application T-11615 to the applicant. The Preliminary Determination cover letter set forth a deadline of November 29, 2013, for the applicant to respond. The applicant's agent 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.

6. On December 12, 2013, the applicant's agent confirmed the applicant's intent to have all four wells serve the entire place of use and amended the transfer application to reflect that intent.

7. The right to be transferred is as follows:

**Certificate:** 88868 in the name of ANDY ROOT (perfected under Permit G-15942)

**Use:** IRRIGATION OF 287.8 ACRES

**Priority Date:** MAY 28, 2004

**Rate:** 3.21 CUBIC FEET PER SECOND further limited to no more than 1.41 cfs from Well 1 and not to exceed 1.8 cfs in any combination from either Well 2 or Well 3 measured at the wells.

**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, 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.

**Period of Use:** March 1 through October 31

**Source:** THREE WELLS within the POISON CREEK SLOUGH BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
23 S	32 E	WM	18	NW NE		WELL 1 - 50 FEET SOUTH AND 3520 FEET EAST FROM THE NW CORNER OF SECTION 18
23 S	32 E	WM	18	NW NW	1	WELL 2 - 410 FEET SOUTH AND 300 FEET EAST FROM THE NW CORNER OF SECTION 18
23 S	32 E	WM	18	NE NW		WELL 3 - 140 FEET SOUTH AND 2200 FEET EAST FROM THE NW CORNER OF SECTION 18

**Authorized Place of Use:**

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Wells
23 S	32 E	WM	18	NE NE		32.3	1
23 S	32 E	WM	18	NW NE		33.6	1
23 S	32 E	WM	18	SW NE		32.0	1
23 S	32 E	WM	18	SE NE		26.4	1
23 S	32 E	WM	18	NE NW		32.4	2 & 3
23 S	32 E	WM	18	NW NW	1	16.4	2 & 3
23 S	32 E	WM	18	SW NW	2	28.8	2 & 3
23 S	32 E	WM	18	SE NW		39.5	2 & 3
23 S	32 E	WM	18	NE SW		27.6	2 & 3
23 S	32 E	WM	18	NW SW	3	15.2	2 & 3
23 S	32 E	WM	18	NW SE		3.6	2 & 3
Total Acres:						287.8	

8. Transfer Application T-11615 proposes additional points of appropriation, Wells 1, 2, 3, and 4, so that all wells can serve the entire place of use of the water right. The wells are located as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
23 S	32 E	WM	18	NW NE		WELL 1 - 50 FEET SOUTH AND 3520 FEET EAST FROM THE NW CORNER OF SECTION 18
23 S	32 E	WM	18	NW NW	1	WELL 2 - 410 FEET SOUTH AND 300 FEET EAST FROM THE NW CORNER OF SECTION 18
23 S	32 E	WM	18	NE NW		WELL 3 - 140 FEET SOUTH AND 2200 FEET EAST FROM THE NW CORNER OF SECTION 18
23 S	32 E	WM	18	NW NW	1	WELL 4 - 315 FEET SOUTH AND 330 FEET EAST FROM THE NW CORNER OF SECTION 18.

9. The approximate distances from each well are as follows:

	Well 1	Well 2	Well 3	Well 4
Well 1		3230 ft	1320 ft	3210 ft
Well 2	3230 ft		1913 ft	113 ft
Well 3	1320 ft	1913 ft		1885 ft
Well 4	3210 ft	113 ft	1885 ft	

***Transfer Review Criteria (OAR 690-380-4010)***

10. The right is not subject to forfeiture under ORS 540.610 since confirming Water Right Certificate 88360 (superseded by Certificate 88868) was issued within the last five years.
11. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11615.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

14. All other application requirements are met.

### **Determination and Proposed Action**

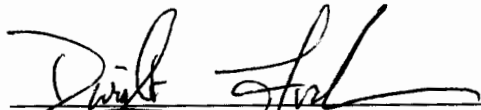
The additional points of appropriation proposed in Transfer Application T-11615 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

*If Transfer Application T-11615 is approved, the final order will include the following:*

1. *The additional points of appropriation proposed in Transfer Application T-11615 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 Certificate 88868 and any related decree.*
3. *Water Right Certificate 88868 is cancelled.*
4. *The quantity of water diverted at the additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points 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 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.*
6. *Water shall be acquired from the same aquifer (water source) as the original points 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 12 day of September 2014.



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

This Preliminary Determination was prepared by Kelly Starnes. If you have questions about the information in this document, you may reach me at 503-986-0886 or Patrick.K.Starnes@wrdd.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.