



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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Salem, OR 97301-1271  
503-986-0900  
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October 13, 2014

VIA E-MAIL

LLOYD & LOIS PIERCY  
PO BOX 24  
ECHO OR 97826

SUBJECT: Water Right Transfer Application T-11575

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11575. 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@wr.d.state.or.us](mailto:Tracy.L.Fox@wr.d.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-11575  
Greg Silbernagel, District 5 Watermaster (*via e-mail*)  
Said Amali, Agent for the applicant (*via e-mail*)  
Nancy East-Smith, CWRE #79225 (*via e-mail*)

enclosure

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11575, Umatilla County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN 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.

**Applicant**

LLOYD P. & LOIS J. PIERCY  
PO BOX 249  
ECHO, OR 97826-0249

**Findings of Fact**

1. On April 15, 2013, LLOYD AND LOIS PIERCY filed an application to change the point of appropriation under Certificate 63718. The Department assigned the application number T-11575.
2. Notice of the application for transfer was published on April 23, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 14, 2014, the Department contacted Lloyd and Lois Piercy by written correspondence to notify the applicant and their agent of deficiencies in the application. Specifically that the application needed to be signed by Lois Piercy as she is listed as an applicant and on the transfer map, the acres don't add up to the acres on the certificate and there are areas on the transfer map that appear to no longer be irrigated. The Department requested that the deficiencies be resolved by March 14, 2014; upon additional requests the date was later extended to July 30, 2014. On May 9, 2014, the applicant's agent submitted an amended application page signed by Lois Piercy.

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 July 29, 2014, the applicant's agent submitted amended application pages and map, which resolves the deficiencies and an Affidavit for Partial Cancellation of a Water Right Certificate requesting to voluntarily cancel 0.6 acre of irrigation use appurtenant to tax lot 201, in the NW1/4 NE1/4 of Section 5, T3N, R29E.
5. On August 7, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11575 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of September 8, 2014, for the applicants to respond. The applicant's agent requested extensions of time. The applicants 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:** 63718 in the name of RAY BRADY (perfected under Permit G-10196)  
**Use:** IRRIGATING 12.0 ACRES  
**Priority Date:** JULY 21, 1983  
**Rate:** 0.15 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 in the UMATILLA RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	29 E	WM	5	NW NE	80 FEET SOUTH AND 1530 FEET WEST FROM THE NE CORNER OF SECTION 5

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	29 E	WM	5	NW NE	12.0

7. Transfer Application T-11575 proposes to move the authorized point of appropriation approximately 130 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	29 E	WM	5	NW NE	100 FEET SOUTH AND 1660 FEET WEST FROM THE NE CORNER OF SECTION 5

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

8. 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.

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-11575.
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..
12. All other application requirements are met.

***Partial Cancellation of a Water Right***

On July 29, 2014, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Lloyd and Lois Piercy. The right to be cancelled is as follows:

**Certificate:** 63718 in the name of RAY BRADY (perfected under Permit G-10196)  
**Use:** IRRIGATING 0.6 ACRES  
**Priority Date:** JULY 21, 1983  
**Rate:** 0.01 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 in the UMATILLA RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	29 E	WM	5	NW NE	80 FEET SOUTH AND 1530 FEET WEST FROM THE NE CORNER OF SECTION 5

**Authorized Place of Use to be Cancelled:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	29 E	WM	5	NW NE	0.6

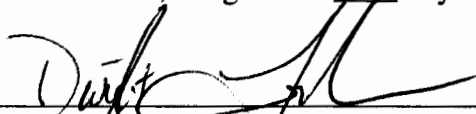
**Determination and Proposed Action**

The change in point of appropriation proposed in Transfer Application T-11575 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 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-11575 is approved, the final order will include the following:*

- 1. The change in point of appropriation proposed in Transfer Application T-11575 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 63718 and any related decree.*
- 3. Water right Certificate 63718 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, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
- 5. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
- 6. 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.*
- 7. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 10 day of October, 2014.

  
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Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, 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@wrds.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.