



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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October 21, 2014

ROBERT AND JILL GABRIEL
8474 HAZELGREEN RD NE SILVERTON,
OR 97381

SUBJECT: Water Right Transfer Application T-11811

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11811. 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.

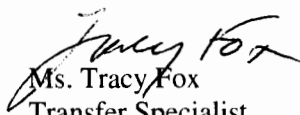
A public notice is being published in the Department's weekly publication and in the Silverton Appeal newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department 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 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-11811
Joel Plahn, District 16 Watermaster (*via e-mail*)
Doann Hamilton, Agent for the applicant (*via e-mail*)

enclosure

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

In the Matter of Transfer Application)
T-11811, Marion County)
)
) **PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF
CHANGES IN 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

ROBERT W. AND JILL M. GABRIEL
8474 HAZELGREEN RD NE
SILVERTON, OR 97381

Findings of Fact

1. On May 9, 2014, ROBERT W. and JILL M. GABRIEL filed an application for changes in points of appropriation under Certificates 54875 and 85895. The Department assigned the application number T-11811.
2. Notice of the application for transfer was published on May 20, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 8, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11811 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of October 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 applicant is authorized to pursue the transfer.

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

Certificate: 54875 in the name of BLAINE P. GRASSMAN (perfected under Permit G-10384)
Use: IRRIGATION of 51.0 ACRES
Priority Date: APRIL 12, 1984
Rate: 0.63 CUBIC FOOT PER SECOND

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.

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: A WELL in the EAST CHAMPOEG CREEK BASIN

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|---|
| 5 S | 2 W | WM | 21 | NE NE | 99 | 920 FEET NORTH AND 2240 FEET WEST FROM THE SE CORNER OF FELIX BERGEVIN DLC 99 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 5 S | 2 W | WM | 22 | NW NE | 99 | 0.1 |
| 5 S | 2 W | WM | 22 | NE NW | 99 | 15.2 |
| 5 S | 2 W | WM | 22 | NW NW | 99 | 5.2 |
| 5 S | 2 W | WM | 22 | SW NW | 99 | 11.2 |
| 5 S | 2 W | WM | 22 | SE NW | 99 | 19.3 |
| Total: | | | | | | 51.0 |

5. Transfer Application T-11811 proposes to change the point of appropriation approximately 767 feet and 0.3 mile, respectively, from the existing point of appropriation to:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|---|
| 5 S | 2 W | WM | 22 | SW NW | 99 | WELL 1: 1810 FEET SOUTH AND 470 FEET EAST FROM THE NW CORNER OF SECTION 22 |
| 5 S | 2W | WM | 22 | SW NW | 99 | WELL 2: 1950 FEET SOUTH AND 1260 FEET EAST FROM THE NW CORNER OF SECTION 22 |

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

Certificate: 85895 in the name of JOHN WEISZ JR (perfected under Permit G-12096)

Use: IRRIGATION of 6.0 ACRES

Priority Date: MARCH 18, 1993

Rate: 0.08 CUBIC FEET 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, 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.

Period of Use: March 1 through October 31

Source: TWO WELLS in the SENECA CREEK BASIN

Authorized Points of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|--|
| 5 S | 2 W | WM | 14 | SW NW | | 480 FEET NORTH AND 2550 FEET WEST FROM THE C1/4 CORNER OF SECTION 14 |
| 5 S | 2 W | WM | 15 | SE SE | 57 | 890 FEET NORTH AND 20 FEET WEST FROM THE SE CORNER OF DLC 41 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|------|-----|-----|-------|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | GLot | Acres |
| 5 S | 21 W | WM | 22 | NW NE | Lot 2 | 0.4 |
| 5 S | 21 W | WM | 22 | SW NE | | 1.6 |
| 5 S | 21 W | WM | 22 | SE NW | Lot 3 | 4.0 |

7. This Order corrects a scrivener error in the certificate recorded at page 85895, State Record of Water Right Certificates. Certificate 85895 erroneously describes the place of use. The place of use is correctly described as follows:

| IRRIGATION | | | | | | |
|------------|------------|-----|-----|-------|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | GLot | Acres |
| 5 S | 2 W | WM | 22 | NW NE | Lot 2 | 0.4 |
| 5 S | 2 W | WM | 22 | SW NE | | 1.6 |
| 5 S | 2 W | WM | 22 | SE NW | Lot 3 | 4.0 |

8. Transfer Application T-11811 proposes to change the points of appropriation approximately 0.9 mile from authorized well 1 and 0.8 mile and 0.6 mile from authorized well 2 to:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|---|
| 5 S | 2 W | WM | 22 | SW NW | 99 | WELL 1: 1810 FEET SOUTH AND 470 FEET EAST FROM THE NW CORNER OF SECTION 22 |
| 5 S | 2W | WM | 22 | SW NW | 99 | WELL 2: 1950 FEET SOUTH AND 1260 FEET EAST FROM THE NW CORNER OF SECTION 22 |

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 rights.
10. A pump, pipeline, and sprinkler 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-11811.
11. The proposed changes would not result in enlargement of the rights.
12. The proposed changes would not result in injury to other water rights.
13. All other application requirements are met.

Determination and Proposed Action

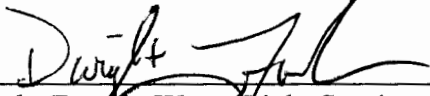
The changes in points of appropriation proposed in Transfer Application T-11811 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-11811 is approved, the final order will include the following:

- 1. The changes in points of appropriation proposed in Transfer Application T-11811 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 54875 and 85895 and any related decree.*
- 3. Water Right Certificates 54875 and 85895 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
- 4. The quantity of water diverted at the new 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 new point of appropriation.*
 - 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, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 20 day of October, 2014.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director,
Oregon Water Resources Department

This Preliminary Determination was prepared by a Reimbursement Authority Contractor. If you have questions about the information in this document, please contact Tracy Fox at 503 986-0827 or Tracy.L.Fox@ wrd.state.or.us.