



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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December 30, 2014

OREGON ROOTSTOCK & TREE INC.  
C/O BRENT SMITH  
10906 MONITOR MCKEE RD NE  
WOODBURN, OR 97071

SUBJECT: Water Right Transfer Application T-11837

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11837. 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 Statesman Journal 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 [Lanaya.F.Blakely@ wrd.state.or.us](mailto:Lanaya.F.Blakely@ wrd.state.or.us) or (503) 986-0888, if I may be of assistance.

Sincerely,

Lanaya Blakely  
Transfer Specialist, Transfer and Conservation Section

cc: T-11837  
Joel Plahn, District 16 Watermaster (*via e-mail*)  
Doann Hamilton, Agent 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-11837, Marion County	)	PROPOSING APPROVAL OF AN
	)	ADDITIONAL POINT 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**

BRENT SMITH  
OREGON ROOTSTOCK & TREE INC.  
10906 MONITOR MCKEE RD NE  
WOODBURN, OR 97071

**Findings of Fact**

1. On June 13, 2014, BRENT SMITH, OREGON ROOTSTOCK & TREE CO., filed an application for an additional point of appropriation under Certificate 68197. The Department assigned the application number T-11837.
2. Notice of the application for transfer was published on June 17, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 21, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11837 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 21, 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.
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4. The portion of the right to be transferred is as follows:

**Certificate:** 68197 in the name of TRECO (perfected under Permit G-8856)  
**Use:** YEAR-ROUND PRIMARY IRRIGATION OF 105.5 ACRES AND SUPPLEMENTAL IRRIGATION OF 55.3 ACRES, AND COMMERCIAL USE IN NURSERY WAREHOUSES  
**Priority Date:** AUGUST 13, 1979  
**Rate:** 2.09 CUBIC FEET PER SECOND (CFS) ; BEING 1.31 CFS FROM WELLS 1 AND 2 FOR PRIMARY IRRIGATION, 0.69 CFS FROM WELL 1 FOR SUPPLEMENTAL IRRIGATION AND 0.09 CFS FROM WELL 1 FOR COMMERCIAL USE  
**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) and 2.5 acre-feet for each acre irrigated during the period of April 1 to September 30. The right is further limited to the diversion of 1 acre foot for each acre irrigated during the period of October 1 to March 31. The supplemental portion of this right is limited to any deficiency in the available supply of any prior right existing for the same land.  
**Source:** TWO WELLS in the PUDDING RIVER BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Measured Distances
5 S	1 W	WM	29	SE SW	4		WELL 1 - 1200 FEET NORTH AND 3750 FEET WEST FROM THE SE CORNER OF SECTION 29
5 S	1 W	WM	30	SE NE		44	WELL 2 - 940 FEET SOUTH AND 460 FEET EAST FROM THE SE CORNER OF LOT 1 (SW 1/4, NE 1/4) OF SECTION 30

**Authorized Place of Use:**

COMMERCIAL USE IN NURSERY WAREHOUSES					
Twp	Rng	Mer	Sec	Q-Q	GLot
5 S	1 W	WM	29	SE SW	4

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
5 S	1 W	WM	29	NE SW	3	2.6
5 S	1 W	WM	29	SW SW	4	2.7
5 S	1 W	WM	29	SE SW	4	9.8
5 S	1 W	WM	32	NW NE		2.0
5 S	1 W	WM	32	SW NE		7.4
5 S	1 W	WM	32	NE NW		13.5
5 S	1 W	WM	32	NW NW	1	9.7
5 S	1 W	WM	32	SE NW		40.0
5 S	1 W	WM	32	NE SW	3	13.2
5 S	1 W	WM	32	NW SE		4.6
Total						105.5

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	1 W	WM	29	SW NW	44	0.6
5 S	1 W	WM	29	NW SW	44	0.3
5 S	1 W	WM	30	SW NE	44	5.2
5 S	1 W	WM	30	SE NE	44	24.8
5 S	1 W	WM	30	NE SE	44	20.0
5 S	1 W	WM	30	NW SE	44	4.4
Total						55.3

5. Transfer Application T-11837 proposes an additional point of appropriation, described as follows with the approximate distances from the existing points of appropriation identified:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Well 1	Distance from Well 2
5 S	1 W	WM	32	SE NW	WELL 3 - 1920 FEET SOUTH AND 1795 FEET EAST FROM THE NW CORNER OF SECTION 32	0.6 mile	1.1 miles

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

6. 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.
7. 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-11837.
8. The proposed change would not result in enlargement of the right.
9. The proposed change would not result in injury to other water rights.
10. All other application requirements are met.

**Determination and Proposed Action**

The additional point of appropriation proposed in Transfer Application T-11837 appears 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-11837 is approved, the final order will include the following:*

1. *The additional point of appropriation proposed in Transfer Application T-11837 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 68197 and any related decree.*

3. *Water Right Certificate 68197 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 additional point 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 24 day of December 2014.

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

*Protests should be addressed to the attention of Water Rights Services Division, Water Resources Department, 725 Summer St. NE. Suite A, Salem, OR 97301-1266*

This Preliminary Determination was prepared by Lanaya Blakely. If you have any questions about the information in this document, you may reach me at (503) 986-0888 or Lanaya.F.Blakely@wrdd.state.or.us.