



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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January 23, 2015

VIA E-MAIL

HANK BARTON  
3838 SW 52ND PLACE  
PORTLAND, OR 97721

SUBJECT: Water Right Transfer Application T-11645

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11645. 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 Sisters' The Nugget 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](mailto: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-11645  
Jeremy T. Giffin, District 11 Watermaster (via e-mail)  
Mathias Perle, Agent for the applicant (via e-mail)  
Michelle W. Sims, CWRE #60068 (via e-mail)

enclosures



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

**Certificate:** 68374 in the name of JOE HANSEN (confirmed by Deschutes River Decree)  
**Use:** IRRIGATION OF 4.0 ACRES, DOMESTIC AND STOCK  
**Priority Date:** 1888  
**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-SIXTIETH of one cubic foot per second (or its equivalent) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.  
**Period of Use:** for irrigation, May 1 to September 15  
**Source:** LAKE CREEK, a tributary of the METOLIUS RIVER

**Authorized Place of Use:**

IRRIGATION, DOMESTIC AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	9 E	WM	16	NW SE	4.0

6. Certificate 68374 does not describe the location of the point of diversion, however information is available from the applicant indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	9 E	WM	16	SW SW	POD 1: 75 FEET NORTH AND 265 FEET EAST OF THE SW CORNER OF SECTION 16

7. Transfer Application T-11645 proposes to move the authorized point of diversion approximately 0.5 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	9 E	WM	16	SW SE	POD 2: 1145 FEET NORTH FROM THE SOUTH ¼ CORNER OF SECTION 16

8. Transfer Application T-11645 proposes to change the place of use of the right within:

Twp	Rng	Mer	Sec	Q-Q
13 S	9 E	WM	16	NW SE

9. Transfer Application T-11645 proposes to change the character of use under Certificate 68374 from irrigation of 4.0 acres, domestic and stock uses to pond maintenance for multipurpose use including, but not limited to, irrigation, domestic and stock uses from May 1 to September 15.

10. Transfer Application T-11645 also proposes to change the character of use under Certificate 68374 from domestic and stock uses to pond maintenance for multipurpose use including, but not limited to, domestic and stock uses from September 16 to April 30.

11. The use of water under Certificate 68374 is limited to 12.0 acre-feet per year (4.0 acres x 3.0 acre-feet per year (afy) – 12.0 afy) during the irrigation season of May 1 to September 15.
12. Use of more water per year than could maximally have been beneficially used for the original domestic use and stock use would constitute enlargement of the right, which is not allowable. Therefore, to avoid enlarging the right in the conversion to pond maintenance, a volume limit should be added to the right, based on the best available estimate of the maximum amount of water that could have been beneficially diverted and used for domestic and stock purposes during the time period of September 16 to April 30.
13. According to the U.S. Census Bureau (2008-2012 American Community Survey 5-Year Estimates), the average household size in Oregon is 2.61 persons. According to the U.S. Geological Survey each person in a household uses 80-100 gallons of water per day. (The use of water under the domestic portion of this right for pond maintenance is limited to 0.26 acre-foot per year (one residence x 2.61 persons per residence x 90 gallons per day (gpd) ÷ 24 hr/day ÷ 60 min/hr = 0.16 gallons per minute (gpm) ÷ 226.67 acre-feet/day x 365 days = 0.26 afy). The use of water under the domestic portion of this right for pond maintenance is limited to 0.16 acre-feet for the time of September 16 to April 30 (0.16 gpm ÷ 226.67 acre-foot day x 227 days = 0.16 acre-feet).
14. According to the Oregon State Extension Service the average number of cattle per acre is one. The use of water under the stock portion of this right for pond maintenance for the time of September 16 to April 30 is 1.82 acre-feet (0.004 cfs x 1.98 = 0.008 acre-foot/day x 227 days = 1.82 acre-feet)
15. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

16. 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.
17. A diversion structure and ditch 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-11645.
18. The proposed changes would not result in enlargement of the right provided the annual volume of water diverted for pond maintenance does not exceed 12.0 acre-feet and shall not exceed a rate of diversion of ONE-SIXTIETH of one cubic foot per second during the irrigation season of May 1 to September 15 and does not exceed 1.98 acre-feet during the remainder of the year (September 16 to April 30).
19. The proposed changes would not result in injury to other water rights.

## **Determination and Proposed Action**

The change in point of diversion, change in place of use, and change in character of use proposed in Transfer Application T-11645 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-11645 is approved, the final order will include the following:*

- 1. The change in point of diversion, change in place of use and change in character of use proposed in Transfer Application T-11645 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 68374 and any related decree.*
- 3. Water right Certificate 68374 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 new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.*
- 5. The use of water for pond maintenance shall not exceed a total quantity diverted of 12.0 acre-feet per year and shall not exceed a rate of diversion of ONE-SIXTIETH of one cubic foot per second during the irrigation season (May 1 to September 15), or its equivalent in case of rotation, measured at the point of diversion from the source.*
- 6. The use of water for pond maintenance shall not exceed a total quantity diverted of 1.98 acre-feet per year from September 16 to April 30, measured at the point of diversion from the source.*
- 7. 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 diversion.*
  - b. The water user shall maintain the meter or measuring device in good working order.*
  - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
- 8. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from ODFW that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

*The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.*

9. *The former place of use of the transferred right shall no longer receive water under the right.*
10. *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.*
11. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 22 day of January, 2015.

  
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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.