



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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February 4, 2015

VIA E-MAIL

NICHOLAS B. AND THERESA J. TEMPLE
6320 DECHARDIN LANE
RENO, NV 89511

SUBJECT: Water Right Transfer Application T-11877

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11877. 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 Klamath Falls Herald and News 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-11877
Scott White, District 17 Watermaster (*via e-mail*)
Adkins Consulting Engineering, LLP, Agent for the applicant (*via e-mail*)
Jonathan M. Moritz, CWRE #58062 (*via e-mail*)

enclosures

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11877, Klamath County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF
)	APPROPRIATION

Authority

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicants

NICHOLAS B. TEMPLE AND THERESA J. TEMPLE
6320 DECHARDIN LANE
RENO, NV 89511

Findings of Fact

1. On August 18, 2014, NICHOLAS B. TEMPLE filed an application to change the point of appropriation under Certificate 67564. The Department assigned the application number T-11877.
2. Notice of the application for transfer was published on August 19, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 2, 2014, the Department contacted the applicant's agent by email to notify them of a couple of minor deficiencies in the application. The Department requested that the deficiencies be resolved by January 3, 2015.
4. On December 15 and 22, 2014, the applicant's agent submitted documents resolving the deficiencies. THERESA J. TEMPLE was added to the transfer application as an applicant at this time.
5. On December 30, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11877 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of January 30, 2015, 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.

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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6. The right to be transferred is as follows:

Certificate: 67564 in the name of JESPERSEN EDGEWOOD INC. (perfected under Permit G-9332)
Use: IRRIGATING 252.2 ACRES
Priority Date: MAY 26, 1981
Rate: 3.15 CUBIC FEET PER SECOND (CFS)
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 cfs (or its equivalent) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year. Provided further that in the event of a request for a change in point of appropriation, or repair of this well, the quantity of water allowed herein, together with any other right from this point of appropriation shall not exceed the capacity of this well at the time of perfection of this right.
Source: A WELL in the SWAN LAKE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	10 E	WM	8	NW SW	1940 FEET NORTH AND 570 FEET EAST FROM THE SW CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	10 E	WM	20	SW SW	32.4
37 S	10 E	WM	20	SE SW	32.0
37 S	10 E	WM	29	NE NW	30.6
37 S	10 E	WM	29	NW NW	31.2
37 S	10 E	WM	29	SW NW	31.2
37 S	10 E	WM	29	SE NW	30.4
37 S	10 E	WM	29	NE SW	32.0
37 S	10 E	WM	29	NW SW	32.4
Total:					252.2

7. Transfer Application T-11877 proposes to move the authorized point of appropriation approximately 2.3 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	10 E	WM	19	SE SW	POA 2: 1200 FEET NORTH AND 2760 FEET WEST FROM THE SE CORNER OF SECTION 19

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 ditch 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-11877.
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.

Determination and Proposed Action

The change in point of appropriation proposed in Transfer Application T-11877 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-11877 is approved, the final order will include the following:

1. *The change in point of appropriation proposed in Transfer Application T-11877 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 67564 and any related decree.*
3. *Water right Certificate 67564 is cancelled.*
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 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 at each new point of appropriation.*
 - b. *The water user shall maintain the meter or measuring device in good working order. In addition the licensee shall maintain a record of all water used each month, including the total number of hours of pumping, the total quantity pumped, and the categories of beneficial use to which the water is applied. During the period of the limited license, the record of use shall be submitted to the Department annually, or more frequently as may be required by the Director, and shall be submitted to the Watermaster upon request.*
 - 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.*
6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*

7. *If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.*
8. *If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may be subject to cancellation, unless the Department authorizes the change in writing.*
9. *Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.*
10. *Dedicated Measuring Tube: Wells with pumps shall be equipped with a minimum 3/4-inch diameter, unobstructed, dedicated measuring tube pursuant to figure 200-5 in OAR 690-200. If a pump has been installed prior to the issuance of this permit, and if static water levels and pumping levels can be measured using an electrical tape, then the installation of the measuring tube can be delayed until such time that water levels cannot be measured or the pump is repaired or replaced.*
11. *The proposed point of appropriation shall obtain groundwater solely from the predominantly volcanic-basalt unit beneath the predominantly basin-fill unit by having continuous casing and continuous seal from land surface completely through the predominantly basin-fill unit and into the predominantly volcanic-basalt unit below the predominantly basin-fill unit.*
12. *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.*

13. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 4 day of February, 2015.



Dwight French, Water Right Services Administrator, for
Thomas M. Byley, 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@wrд.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.