



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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February 12, 2015

VIA E-MAIL

DENNIS AND JANIS HITT
12445 HWY 140 E
KLAMATH FALLS, OR 97603

SUBJECT: Water Right Transfer Application T-11845

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11845. 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 Lanaya.F.Blakely@wr.d.state.or.us or (503) 986-0888, if I may be of assistance.

Sincerely,

Lanaya Blakely
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-11845
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*)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11845, Klamath 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

DENNIS AND JANIS HITT
12445 HWY 140 E
KLAMATH FALLS, OR 97603

Findings of Fact

1. On June 18, 2014, DENNIS AND JANIS HITT filed an application for an additional point of appropriation under Certificate 47716. The Department assigned the application number T-11845.
2. Notice of the application for transfer was published on June 24, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 17, 2014, the Department requested that the applicant submit a Consent to Transfer Affidavit for 8.7 acres not owned by the applicant, included on the Transfer Application Table 2.
4. On December 17, 2014 the applicant's agent submitted an amended Table 2 of the Transfer Application, excluding the 8.7 acres not owned by the applicant from the transfer.
5. On January 8, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11845 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of February 9, 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.

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

Certificate: 47716 in the name of SCHMOE, KILGORE & KILGORE (perfected under Permit G-6643)

Use: IRRIGATION of 122.6 ACRES

Priority Date: JANUARY 15, 1976

Rate: 1.53 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, 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 within the LOST RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	14 E	WM	8	SW SW	1025 FEET NORTH AND 690 FEET EAST FROM THE SW CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	14 E	WM	8	NW NE	7.0
41 S	14 E	WM	8	NE NW	40.0
41 S	14 E	WM	8	SE NW	40.0
41 S	14 E	WM	8	NE SW	33.4
41 S	14 E	WM	8	NW SW	0.2
41 S	14 E	WM	8	NW SE	2.0

7. Transfer Application T-11845 proposes an additional point of appropriation approximately 35 feet North from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	14 E	WM	8	SW SW	990 FEET NORTH AND 690 FEET EAST FROM THE SW CORNER OF SECTION 8

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-11845.
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.

Determination and Proposed Action

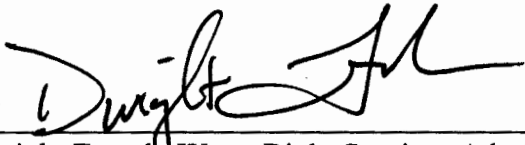
The additional point of appropriation proposed in Transfer Application T-11845 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-11845 is approved, the final order will include the following:

1. *The additional point of appropriation proposed in Transfer Application T-11845 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 47716 and any related decree.*
3. *Water right certificate 47716 is cancelled. A new certificate will be issued describing the portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the additional point of appropriation, with that diverted at the original 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 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 is/are located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Prior to using water from any well listed on this final order, the water user 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.*
7. *If the number, location, source, or construction of any well deviates from that proposed in the transfer application or required by final order conditions, this permit may be subject to cancellation, unless the Department authorizes the change in writing.*
8. *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 wells 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.*

9. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation. The additional 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.*
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 change 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 12 day of Feb. 2015.



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 question about the information in this document, you may reach me at (503) 986-0888 or Lanaya.F.Blakely@ wrd.state.or.us.