



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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February 17, 2015

KIT JOHNSTON
11320 SE LAFAYETTE HWY
DAYTON, OR 97114

SUBJECT: Water Right Transfer Application T-11857

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11857. 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: T-11857
Joel Plahn District 16 Watermaster (*via e-mail*)
James M. Schuette, Agent for the applicant (*via e-mail*)
Palmer Creek Water District Improvement Company

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

In the Matter of Transfer Application) **PRELIMINARY DETERMINATION**
T-11857, Yamhill County) **PROPOSING APPROVAL OF A**
) **CHANGE IN 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

KIT JOHNSTON
11320 SE LAFAYETTE HWY
DAYTON, OR 97114

Findings of Fact

1. On July 8, 2014, Kit Johnston filed an application to change the point of appropriation under Certificate 28281. The Department assigned the application number T-11857.
2. Notice of the application for transfer T-11857 was published on July 15, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. During the review process, the Department determined that the location of the proposed point of appropriation depicted on the Transfer application map did not match the proposed location described in Table 1 of the application. On November 19, 2014 the Department sent a deficiency letter to the applicant's agent, requesting that either the transfer application map or Table 1 be amended to reflect one another.
4. On November 20, 2014 the Department received an amended Table 1, consistent with the Transfer application map, from the applicant's agent.

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.

5. On December 2, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11857 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 31, 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.
6. The portion of the right to be transferred is as follows:

Certificate: 28281 in the name of EARLE F. AND LAVERN E. DAY (perfected under Permit G-149)
Use: IRRIGATION of 21.3 ACRES
Priority Date: FEBRUARY 27, 1956
Rate: 0.234 CUBIC FOOT 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 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.
Source: WELL 1

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	4 W	WM	1	NE NE	2.5 CHAINS SOUTH AND 19 CHAINS WEST FROM THE NE CORNER OF SECTION 1

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
4 S	4 W	WM	36	SW SE	8	8.0
5 S	4 W	WM	1	NW NE		13.3

7. Transfer Application T-11857 proposes to move the authorized point of appropriation approximately 924 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	4 W	WM	1	SW SE	50 FEET SOUTH AND 2190 FEET WEST FROM THE NE CORNER OF SECTION 1

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-11857.
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-11857 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-11857 is approved, the final order will include the following:

1. *The change in point of appropriation proposed in Transfer Application T-11857 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 28281 and any related decree.*
3. *Water right certificate 28281 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 new point of appropriation, together 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 shall be acquired from the same aquifer (water source) as the original point of appropriation.*
6. *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.*

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

Dated at Salem, Oregon this 17 day of February 2014.



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.