

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

In the Matter of Transfer Application            )  
T-9388, Lake County                                )  
  )  
  )    PRELIMINARY DETERMINATION  
  )    PROPOSING APPROVAL OF A  
  )    CHANGE IN PLACE OF USE AND  
  )    POINTS 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**

LEE ROY HORTON  
58814 OIL DRIVE ROAD  
CHRISTMAS VALLEY, OR 97641

**Receiving Landowner**

PHILIP EIDE  
PO BOX 254  
CHRISTMAS VALLEY, OR 97641

**Findings of Fact**

***Background***

1. On April 3, 2003, Lee Roy Horton filed an application to transfer the place of use and points of appropriation under Certificates 54250, 76578, and 76671. The Department assigned the application number T-9388.
2. On May 31, 2006, the map and application were amended with the approval of Bruce Estes, Certified Water Rights Examiner (CWRE).
3. Philip Eide is the receiving landowner for the portion of land to be transferred under Certificates 76578 and 76671.
4. The first right to be transferred is as follows:

**Certificate:** 54250 in the name of Lawrence H. and Della M. Mattingly (perfected under Permit G-9465)  
**Use:** IRRIGATION of 130.7 ACRES  
**Priority Date:** JUNE 12, 1981  
**Rate:** 1.63 CUBIC FEET PER SECOND (cfs)  
**Limit/Duty:** ONE-EIGHTIETH of one cfs per acre, not to exceed 3.0 acre-feet per acre per year  
**Source:** A well in the Fort Rock Basin

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.

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
25 S	19 E	WM	20	NW SW	3880 feet South & 1290 feet East from the NW corner of Section 20

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	19 E	WM	20	NE SW	33.5
25 S	19 E	WM	20	NW SW	32.5
25 S	19 E	WM	20	SW SW	32.0
25 S	19 E	WM	20	SE SW	32.7
<b>Total:</b>					<b>130.7</b>

5. Application T-9388 proposes to move the authorized points of appropriation approximately 17 miles southwest from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
26 S	16 E	WM	27	SW SE	1314 feet North & 1220 feet East from the S¼ corner of Section 27
26 S	16 E	WM	28	SW NW	1340 feet South & 1150 feet East from the NW corner of Section 28

6. Application T-9388 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	16 E	WM	27	SW NE	0.6
26 S	16 E	WM	27	SE NE	0.4
26 S	16 E	WM	27	NE SW	0.9
26 S	16 E	WM	27	NW SE	2.0
26 S	16 E	WM	28	NE NW	31.0
26 S	16 E	WM	28	NW NW	32.4
26 S	16 E	WM	28	SW NW	31.8
26 S	16 E	WM	28	SE NW	31.6
<b>Total</b>					<b>130.7</b>

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

**Certificate:** 76578 in the name of CHARLES NOFZIGER (perfected under Permit G-10099)

**Use:** IRRIGATION of 20.8 ACRES

**Priority Date:** APRIL 27, 1983

**Rate:** 0.26 CUBIC FOOT PER SECOND (cfs)

**Limit/Duty:** ONE-EIGHTIETH of one cfs per acre, not to exceed 3.0 acre-feet per acre per year

**Source:** A well in the Christmas Valley Basin

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
26 S	16 E	WM	6	NW SE	2510 feet North & 1820 feet West from the SE corner of Section 6

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	16 E	WM	6	NE SE	10.8
26 S	16 E	WM	6	NW SE	10.0
<b>Total:</b>					<b>20.8</b>

8. Application T-9388 proposes to move the authorized point of appropriation approximately 4 miles southeast from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
26 S	16 E	WM	34	SE NE	20 feet North & 60 feet West from the E¼ corner of Section 34

9. Application T-9388 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	16 E	WM	34	SW NE	0.9
26 S	16 E	WM	34	NW SE	9.4
26 S	16 E	WM	34	SW SE	1.7
26 S	16 E	WM	34	SE SE	8.8
<b>Total:</b>					<b>20.8</b>

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

**Certificate:** 76671 in the name of MERVIN STUTZMAN (perfected under Permit G-9141)  
**Use:** IRRIGATION of 21.5 ACRES  
**Priority Date:** AUGUST 13, 1980  
**Rate:** 0.269 CUBIC FEET PER SECOND (cfs), being 0.155 cfs from Well #1 and 0.114 cfs from Well #2  
**Limit/Duty:** ONE-EIGHTIETH of one cfs per acre, not to exceed 3.0 acre-feet per acre per year  
**Source:** Two wells in the Fort Rock Basin

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
26 S	16 E	WM	14	SW NW	Well 1 - 3960 feet North & 1175 feet East from the SW corner of Section 14
26 S	16 E	WM	14	SW SW	Well 2 - 1320 feet North & 10 feet East from the SW corner of Section 14

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	16 E	WM	14	NW SW	10.5
26 S	16 E	WM	14	SW SW	11.0
<b>Total:</b>					<b>21.5</b>

11. Application T-9388 proposes to move the authorized point of appropriation approximately 3 miles south from the existing point of appropriation to:

Twtp	Rng	Mer	Sec	Q-Q	Survey Coordinates
26 S	16 E	WM	27	SW SE	1314 feet North & 1220 feet East from the S¼ corner of Section 27
26 S	16 E	WM	34	SE NE	20 feet North & 60 feet West from the E¼ corner of Section 34

12. Application T-9388 also proposes to change the place of use of the right to:

Twtp	Rng	Mer	Sec	Q-Q	Acres
26 S	16 E	WM	27	NE SE	2.5
26 S	16 E	WM	34	NE NE	9.0
26 S	16 E	WM	34	NW NE	1.7
26 S	16 E	WM	34	SW NE	8.3
<b>Total:</b>					<b>21.5</b>

13. Notice of the application for transfer was published on April 15, 2003, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
14. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
15. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right is present.
16. The proposed change would not result in enlargement of the rights.
17. The proposed change would not result in injury to other water rights.

### **Determination and Proposed Action**

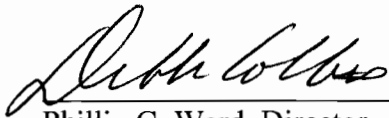
The changes in place of use and points of appropriation proposed in Transfer Application T-9388 appear to be consistent with the requirements of ORS 537.705, 540.505 to 540.580, and OAR 690-380-5000, and will be approved provided that protests are not filed pursuant to OAR 690-380-4030.

*If Transfer Application T-9388 is approved, the final order will include the following:*

1. *The changes in place of use and points of appropriation proposed in Transfer Application T-9388 are approved.*
2. *The right to 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 Certificates 54250, 76578, and 76671.*
3. *Water Right Certificates 54250, 76578 and 76671 are cancelled. New certificates will be issued describing that portion of the rights evidenced by Certificates 76578 and 76671 not affected by this transfer.*

4. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
5. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. A Claim of Beneficial Use prepared by a Certified Water Rights 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.*
6. *The quantity of water diverted at the new points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.*
7. *The former place of use of the transferred rights shall no longer receive water as part of these rights.*
8. *Prior to diverting water at the new points of appropriation, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.*
9. *When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 28<sup>th</sup> day of March 2007.



Phillip C. Ward, Director

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

This Preliminary Determination was prepared by Vern Church. If you have questions about the information in this document, you may reach me at (541) 883-4182 or [Vernon.L.Church@wrdd.state.or.us](mailto:Vernon.L.Church@wrdd.state.or.us).