



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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February 19, 2013

Applicant

JOHN PEILA JR
PO BOX 697
BURNS, OR 97720

SUBJECT: Water Right Transfer Application T-11345

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11345. 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 Lake County Examiner 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 Department's notice or 30 days after the last date of newspaper publication, whichever occurs later.

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 (503) 986-0890 or Dorothy.I.Pedersen@ wrd.state.or.us if I may be of assistance.

Sincerely,

Dorothy Pedersen
Transfer Program Advisor

cc: T-11345
Brian M. Mayer, District 12 Watermaster (*via e-mail*)
Scott D. Montgomery, Agent for the applicant (*via e-mail: scott@apeands.com*)

encs



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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11345, Lake County	)	PROPOSING APPROVAL OF A
	)	CHANGES IN PLACE OF USE AND
	)	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

JOHN PEILA
PO BOX 697
BURNS, OR 97720

Agent

SCOTT D. MONTGOMERY, CWRE
PO BOX 767
CROOKED RIVER RANCH, OR 97760

Findings of Fact

Background

1. On January 23, 2012, John Peila, President of Peila Ranch, LLC, filed an application to change the place of use and add an additional point of appropriation under Certificates 35868 and 48154. The Department assigned the application number T-11345.
2. On October 22 and 25, 2012, the applicant's agent submitted revised application and map pages via e-mail.
3. The first right to be transferred is as follows:

Certificate:	35868 in the name of SAM BOYCE (perfected under Permit G-2232)
Use:	IRRIGATION of 200.0 ACRES
Priority Date:	AUGUST 7, 1962
Rate:	1.82 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, 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:	SAM BOYCE WELLS #1 and #2, within the ALKALI LAKE AREA

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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Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
27 S	23 E	WM	20	SE NW	WELL 2 - 3270 FEET NORTH AND 1350 FEET EAST FROM THE SW CORNER OF SECTION 20
27 S	23 E	WM	20	NW SW	WELL 1 - 1500 FEET NORTH AND 440 FEET EAST FROM THE SW CORNER OF SECTION 20

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
27 S	23 E	WM	20	NE NW	36.2
27 S	23 E	WM	20	NW NW	36.2
27 S	23 E	WM	20	SW NW	40.0
27 S	23 E	WM	20	SE NW	31.5
27 S	23 E	WM	20	NE SW	20.7
27 S	23 E	WM	20	NW SW	35.4

4. Transfer application T-11345 proposes to change the point of appropriation for a portion of the right to be moved to a new place of use in Section 17. Proposed Well #3 is approximately 5200 feet north from Well #1 and 3350 feet north from Well #2 and is located as follows:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
27 S	23 E	WM	17	NE SW	WELL #3 - 1560 FEET NORTH AND 1615 FEET EAST FROM THE SW CORNER OF SECTION 17

5. Transfer application T-11345 proposes to change the place of use to:

IRRIGATION - WELLS #1 and #2					
Twp	Rng	Mer	Sec	Q - Q	Acres
27 S	23 E	WM	20	NE NW	35.6
27 S	23 E	WM	20	NW NW	35.2
27 S	23 E	WM	20	SW NW	35.1
27 S	23 E	WM	20	SE NW	34.5
27 S	23 E	WM	20	NE SW	1.0
27 S	23 E	WM	20	NW SW	0.9

IRRIGATION - WELL #3					
Twp	Rng	Mer	Sec	Q - Q	Acres
27 S	23 E	WM	17	SW NW	1.6
27 S	23 E	WM	17	SE NW	0.5
27 S	23 E	WM	17	NE SW	24.9
27 S	23 E	WM	17	NW SW	30.7

6. The second right to be transferred is as follows:

Certificate: 48154 in the name of HAY CREEK RANCH, CLARENCE TRACY;
DOUGLAS TRACY (perfected under Permit G-6124)
Use: IRRIGATION of 78.8 ACRES
Priority Date: APRIL 26, 1974
Rate: 0.9 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, 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 FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
27 S	23 E	WM	17	SE SW	1280 FEET NORTH AND 1320 FEET EAST FROM THE SW CORNER OF SECTION 17

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
27 S	23 E	WM	17	SW SW	39.4
27 S	23 E	WM	17	SE SW	39.4

7. Certificate 48154 describes the location of the point of appropriation. However, better information is available from the current map prepared by the applicant's Certified Water Rights Examiner based on a recent field visit and subsequent survey indicating that the point of appropriation (called applicant's Well#3) is located as follows:

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
27 S	23 E	WM	17	NE SW	WELL #3 - 1560 FEET NORTH AND 1615 FEET EAST FROM THE SW CORNER OF SECTION 17

8. Transfer Application T-11345 proposes to change the place of use to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
27 S	23 E	WM	17	NE SW	7.2
27 S	23 E	WM	17	NW SW	2.9
27 S	23 E	WM	17	SW SW	33.6
27 S	23 E	WM	17	SE SW	35.1

9. Notice of the application for transfer was published on January 31, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
10. On October 25, 2012, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11345 to the applicant. The draft Preliminary Determination set forth a deadline of November 26, 2012 for the applicant to respond. On December 12, 2012, the applicant submitted a written response requesting the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

Transfer Review Criteria (OAR 690-380-4010)

9. Water has been used within the last five years prior to the submittal of Transfer Application T-11345 according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
10. Wells, pumps, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11345.
11. The Department has determined that the proposed well (LAKE 52283) will develop the same source of water as the authorized existing wells (LAKE 52281 and LAKE 52282), being the basalt group system.
12. The proposed changes would not result in enlargement of the rights.
13. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

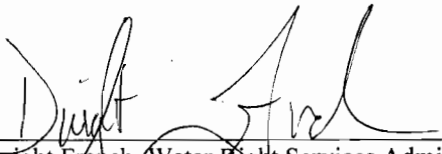
The changes in place of use and point of appropriation proposed in Transfer Application T-11345 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-11345 is approved, the final order will include the following:

- 1. The changes in place of use and additional point of appropriation proposed in application T-11345 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 Certificates 35868 and 48154 and any related decree.*
- 3. Water right certificates 35868 and 48154 are cancelled.*
- 4. The quantity of water diverted at the new additional point of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.*
- 5. 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 the new point of appropriation. The water user shall maintain the meter or measuring device in good working order. 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 points of appropriation.*
7. *The former places of use of the transferred right shall no longer receive water under the rights.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2014**. 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.*
9. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 19 day of February, 2013.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@wr.d.state.or.us.

Protests should be addressed to the attention of Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.