



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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February 17, 2015

PADRE PROPERTIES LLC  
RICHARD BRADEN, MEMBER  
PO BOX 1032  
HUGHSON CA 95326

SUBJECT: Water Right Transfer Application T-11915

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11915. 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 [Tracy.L.Fox@ wrd.state.or.us](mailto: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-11915  
Larry P. Menteer, District 13 Watermaster (*via e-mail*)  
Schroeder Law Offices PC, Agent for the applicant (*via e-mail*)  
Gary Kaiser, CWRE #73 (*via e-mail*)

enclosure

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11915, Josephine and Jackson Counties	)	PROPOSING APPROVAL OF A
	)	CHANGE IN PLACE OF USE AND
	)	PARTIAL CANCELLATION OF A
	)	WATER RIGHT

**Authority**

Oregon Revised Statute (ORS) 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, 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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicant**

PADRE PROPERTIES LLC  
RICHARD M. BRADEN, MEMBER  
PO BOX 1032  
HUGHSON, CA 95326

**Findings of Fact**

1. On November 4, 2014, PADRE PROPERTIES LLC, RICHARD M. BRADEN, MEMBER, filed an application to change the place of use under Certificates 32830 and 44830 and partially cancel Certificate 44830. The Department assigned the application number T-11915.
2. On November 4, 2014, PADRE PROPERTIES LLC, RICHARD M. BRADEN, MEMBER, filed an "Affidavit for the Partial Cancellation of a Water Right Certificate" for Certificate 44830.
3. Notice of the application for transfer was published on November 11, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On January 21, 2015, the Department contacted the applicant's agent by email to notify the applicant of minor deficiencies in the application. The Department requested that the

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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deficiencies be resolved by February 23, 2015. On January 21, 2015, the agent resolved the deficiencies.

5. On January 28, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11915 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 2, 2015, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination with a few minor changes and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer

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

**Certificate:** 32830 in the name of J. T. COOK (confirmed by the Rogue River Decree)  
**Use:** IRRIGATION of 3.2 ACRES  
**Priority Date:** FEBRUARY 1899  
**Rate:** 0.060 CUBIC FOOT PER SECOND  
**Source:** APPLGATE RIVER, a tributary of ROGUE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
38 S	4 W	WM	6	SW SW

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
37 S	5 W	WM	36	SW SE	37	3.20

7. Certificate 32830 does not describe the 'measured distances' for the point of diversion, however information is available from the applicant and the Certified Water Rights Examiner (CWRE) indicating that the 'measured distances' are as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	4 W	WM	6	SW SW	4590 FEET SOUTH AND 740 FEET EAST FROM THE NE CORNER OF SECTION 1, T38S, R5W

8. Transfer Application T-11915 proposes to change the place of use of the right to irrigated strips four feet wide alternating with non-irrigated strips four feet wide within a larger land parcel. The acreage below represents the irrigated area:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	4 W	WM	6	SW NW	2.50
38 S	4 W	WM	6	NW SW	0.70

9. Based on the Rogue River Decree, the irrigation season associated with Certificate 32830 is April 1 through October 31.

10. Based on the Rogue River Decree, the rate of water associated with Certificate 32830 shall be 1/80 of a second foot per acre.

11. Based on the Rogue River Decree, the duty of water associated with Certificate 32830 shall not exceed 4.5 acre feet per acre per year.

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

**Certificate:** 44830 in the name of NORTHSIDE APPLGATE RIVER DITCH CO., INC. (perfected under Permit S-31981)  
**Use:** IRRIGATION OF 0.35 ACRE AND SUPPLEMENTAL IRRIGATION OF 2.34 ACRES  
**Priority Date:** SEPTEMBER 7, 1966  
**Rate:** 0.067 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-FORTIETH 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 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** APPLGATE RIVER AND SLAGLE CREEK, tributaries of ROGUE RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	4 W	WM	6	SW SW	APPLGATE R: 4000 FEET SOUTH AND 80 FEET EAST FROM THE NE CORNER OF SECTION 1, T38S, R5W
38 S	5 W	WM	1	SE NE	SLAGLE CR: 2050 FEET SOUTH AND 240 FEET WEST FROM THE NE CORNER OF SECTION 1, T38S, R5W

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	5 W	WM	36	SW SE	0.35

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	5 W	WM	36	SW SE	2.34

13. Information is available from the applicant and the CWRE that more accurately describes the measured distances for the point of diversion on the Applegate River as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	4 W	WM	6	SW SW	APPLGATE R: 4590 FEET SOUTH AND 740 FEET EAST FROM THE NE CORNER OF SECTION 1, T38S R5W

14. There is a scrivener's error on Certificate 44830 describing the location of the place of use for Primary and Supplemental in the SW1/4 SE1/4. Certificate 44830 says there is 14.3 acres of Primary in the SW1/4 SE1/4 and 7.7 acres of Supplemental in the SW1/4 SE1/4,

however those two numbers were transposed. It should be 7.7 acres of Primary in the SW1/4 SE1/4 and 14.3 acres of Supplemental in the SW1/4 SE1/4.

15. Transfer Application T-11915 proposes to change the place of use of the right to irrigated strips four feet wide alternating with non-irrigated strips four feet wide within a larger land parcel. The acreage below represents the irrigated area:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	4 W	WM	6	SW NW	0.35

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	4 W	WM	6	SW NW	1.64
38 S	4 W	WM	6	NW SW	0.70

16. Based on the Rogue River Decree, the irrigation season associated with Certificate 44830 is April 1 through October 31.

***Transfer Review Criteria [OAR 690-380-4010(2)]***

17. 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 rights are subject to forfeiture under ORS 540.610.
18. A pump, 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-11915.
19. The proposed change in place of use could result in enlargement of the rights if the application of water extends beyond the proposed place of use. Absent soil moisture monitoring, it would be impossible to determine whether or not enlargement was occurring.
20. Adherence to the water flow measurement and soil moisture monitoring conditions listed below would provide the tools necessary to determine that enlargement was not occurring.
21. The proposed changes, as conditioned, would not result in enlargement of the rights.
22. The proposed changes, as conditioned, would not result in injury to other water rights.

***Partial Cancellation of a Water Right***

23. On November 4, 2015, an affidavit certifying that a portion of a water right will be abandoned and requesting cancellation of the right was received from Richard Braden, managing member of Padre Properties, LLC. The right to be cancelled is as follows:

**Certificate:** 44830 in the name of NORTHSIDE APPLGATE RIVER DITCH CO., INC. (perfected under Permit S-31981)

**Use:** IRRIGATION of 0.08 ACRE PRIMARY AND 0.56 ACRE SUPPLEMENTAL

**Priority Date:** SEPTEMBER 7, 1966

**Rate:** 0.016 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-FORTIETH 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 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** SLAGLE CREEK, a tributary of APPLGATE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	5 W	WM	1	SE NE	SLAGLE CR: 2050 FEET SOUTH AND 240 FEET WEST FROM THE NE CORNER OF SECTION 1, TWP 38 SOUTH, RNG 5 WEST

**Authorized Place of Use to be Cancelled:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	5 W	WM	36	SW SE	0.08

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	5 W	WM	36	SW SE	0.56

**Determination and Proposed Action**

The change in place of use proposed in Transfer Application T-11915 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the abandoned right will be cancelled.


*If Transfer Application T-11915 is approved, the final order will include the following:*

1. *The change in place of use proposed in Transfer Application T-11915 is approved. The portion of the right that has been abandoned is cancelled.*
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 32830 and 44830 and any related decree.*
3. *Water right Certificates 32830 and 44830 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer and cancellation.*
4. *The water user shall install and maintain a water flow and soil moisture monitoring system.*

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- 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 and on the mainline serving the property. The meter shall only measure water used by Padre Properties LLC and should be located prior to any laterals off the mainline.*
  - 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 are located within a private structure, the Watermaster shall request access upon reasonable notice.*
  - d) *The monitoring system shall include Gro-Point Sensors or a similar monitoring system capable of accuracy that is equivalent to or superior to the level of accuracy provided by the Gro-Point system. The type of system and installation plans must be approved by the Watermaster prior to installation.*
  - e) *The soil moisture monitoring sites shall be selected for each soil type, slope, and crop type. Additional soil moisture monitoring stations shall be installed as required by the Watermaster where conditions dictate more monitoring stations are required to effectively determine irrigation is occurring where there is an appurtenant water right. The monitoring program, including both the number and location of the monitoring sites, shall be approved by the Watermaster prior to installation.*
  - f) *Control soil moisture monitoring site(s) shall be selected for each soil type and slope that receives only natural moisture from the atmosphere, and does not receive direct irrigation water nor irrigation run-off.*
  - g) *Soil moisture content shall be monitored continuously or collected at a minimum of weekly intervals until one week past the end of the irrigation season. Soil moisture data collected from the monitoring system shall be reported to the Watermaster in summary format including equipment used and monitoring data listed by station and measurement field, as approved by the Watermaster.*
  - h) *Soil moisture reports shall be made during the first week prior to the irrigation season and once per week during the first three weeks of the irrigation season. Unless otherwise required by the Watermaster, soil moisture data collected shall be reported to the Watermaster within 3 days of the data collection date. Reporting requirements may be modified, as dictated by the Watermaster or upon written request from the water user subject to approval of the Watermaster. However, review of the monitoring program can occur at any time with a formal request from the water user or the Watermaster. Modification to the monitoring program may occur at any time as deemed necessary and/or appropriate by the Watermaster.*
  - i) *Upon reasonable notice the water user shall provide the Watermaster access to metering equipment and moisture monitoring stations as well as access to monitoring data and flow data, including access to real time data on an internal web site or computer.*

- j) *The water user shall promptly inform the Watermaster of any situation that results in the application of water to any land without a water right, including but not limited to the areas between crop rows. The water user shall also inform the Watermaster of the course of action taken by the water user to correct the problem and prevent the future occurrence of similar events.*
- k) *If water is applied to lands without water rights, including but not limited to, the area between the crop rows, the Watermaster may regulate the water use until the soil moisture and flow data demonstrate that the areas without water rights are no longer receiving water.*
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 re-diversion from the North Side Ditch (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 are located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *The former place of use of the transferred rights shall no longer receive water under the rights.*
7. *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 changes and full beneficial use of the water.*
8. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 18 day of February, 2015.

  
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Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Tracy Fox at 503 986-0827 or Tracy.L.Fox@ wrd.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.