



# Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department  
North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
503-986-0900  
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February 19, 2015

VIA E-MAIL

MOSBY FAMILY TRUST  
294 BITTERROOT DRIVE  
LEWISTON, MT 59457

SUBJECT: Water Right Transfer Application T-11922

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11922. 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 Klamath Falls Herald & News 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 last date of newspaper publication.

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 [Sarah.A.Henderson@ wrd.state.or.us](mailto:Sarah.A.Henderson@ wrd.state.or.us) if I may be of assistance.

Sincerely,

*Sarah Henderson*

Transfer Specialist  
Transfer and Conservation Section

cc: T-11922  
Scott White, District 17 Watermaster (via e-mail)  
Scott D. Montgomery, Agent & CWRE for the applicant (via e-mail)  
Dominic Carollo, Attorney (via e-mail)

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7. On January 28, 2015, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-11922 to the applicant. On February 4, 2015, the applicant agreed with the proposed changes and conditions and requested the Department proceed with the issuance of a Preliminary Determination.

8. The right to be transferred is as follows:

**Certificate:** 34992 in the name of YAMSEY LAND & CATTLE CO. (perfected under Permit G-2243)

**Use:** SUPPLEMENTAL IRRIGATION of 753.0 ACRES

**Priority Date:** SEPTEMBER 4, 1962

**Rate:** 9.41 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:** YAMSAY WELL No. 2 within the COW CREEK (Williamson River) BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
31 S	7 E	WM	1	NE SE	70 FEET NORTH AND 760 FEET WEST FROM THE W1/4 CORNER OF SECTION 6, T31S, R8E

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
31 S	8 E	WM	5	NE SW		40.0
31 S	8 E	WM	5	NW SW		40.0
31 S	8 E	WM	5	SW SW		40.0
31 S	8 E	WM	5	SE SW		40.0
31 S	8 E	WM	7	NE NE		40.0
31 S	8 E	WM	7	NW NE		40.0
31 S	8 E	WM	7	SW NE		40.0
31 S	8 E	WM	7	SE NE		40.0
31 S	8 E	WM	7	NE NW		40.0
31 S	8 E	WM	7	NW NW	1	34.5
31 S	8 E	WM	7	SW NW	2	34.5
31 S	8 E	WM	7	SE NW		40.0
31 S	8 E	WM	17	NE NE		33.0
31 S	8 E	WM	17	NW NE		40.0
31 S	8 E	WM	17	SW NE		40.0
31 S	8 E	WM	17	SE NE		11.0
31 S	8 E	WM	17	NE NW		40.0
31 S	8 E	WM	17	NW NW		40.0
31 S	8 E	WM	17	SW NW		40.0
31 S	8 E	WM	17	SE NW		40.0
Total						753.0

9. Transfer Application T-11922 proposes an additional point of appropriation approximately 0.6 mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
31 S	8 E	WM	7	NW NW	BAR Y #1 - 100 FEET SOUTH AND 100 FEET EAST FROM THE NW CORNER OF SECTION 7

**Transfer Review Criteria (OAR 690-380-4010)**

10. 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.
11. 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-11922.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.
14. All other application requirements are met.

**Determination and Proposed Action**

The additional point of appropriation proposed in Transfer Application T-11922 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.

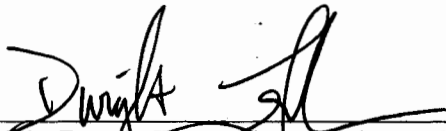
*If Transfer Application T-11922 is approved, the final order will include the following:*

1. *The additional point of appropriation proposed in Transfer Application T-11922 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 34992 and any related decree.*
3. *Water right Certificate 34992 is cancelled. A new certificate will be issued describing those portions of the right not affected by this transfer.*
4. *The quantity of water diverted at the additional 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. *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.*

6. *Prior to using water from any well listed on this permit, the permittee 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. *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 are located within a private structure, the Watermaster shall request access upon reasonable notice.*
8. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
9. *The additional point of appropriation shall be constructed to obtain groundwater from the volcanic sediments (likely pumice and "black sand" with occasional lava flow interbeds) in consultation with the Department's Groundwater Section hydrogeologist and Department's Well Enforcement lead well inspector in regards to adequate casing and seal and open interval.*
10. *Prior to use, the original point of appropriation shall be configured to allow a strictly clean water (no oil) static water level measurements with an electric-tape. That can include measurement access via an unobstructed vertical discharge pipe that allows the groundwater level to fluctuate freely within the discharge pipe (no valves, etc.). Otherwise, a dedicated measuring tube must be installed prior to use. The tube must be unobstructed, have a diameter of 3/4 inch (0.75 inch) or greater and pursuant to figure 200-5 in OAR 690-200.*
11. *Prior to use, the additional point of appropriation shall have a dedicated measuring tube that must be installed prior to use. The tube must be unobstructed, have a diameter of 3/4 inch (0.75 inch) or greater and pursuant to figure 200-5 in OAR 690-200.*
12. *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.*

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

Dated at Salem, Oregon this 19 day of February, 2015.



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

This Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-986-0890 or [Sarah.A.Henderson@wrд.state.or.us](mailto:Sarah.A.Henderson@wrд.state.or.us).

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