



Oregon

Kate Brown, Governor

Water Resources Department

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June 24, 2015

VIA E-MAIL

Applicant

PATTI KAYSER
PO BOX 431
CONDON, OR 97823

SUBJECT: Water Right Transfer Application T-11747

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11747. 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 East Oregonian 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 if I may be of assistance.

Sincerely,

Joan Smith
Transfer Specialist

cc: T-11747
Kenneth C. Thiemann, District 21 Watermaster *(via e-mail)*
William I. Porfily, Agent for the applicant *(via e-mail)*
Dale G. VanSchoiack, CWRE #333 *(via e-mail)*

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11747, Gilliam County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF
)	APPROPRIATION

Authority

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

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Findings of Fact

1. On February 28, 2014, PATTI KAYSER filed an application for an additional point of appropriation under Certificates 43898 and 48133. The Department assigned the application number T-11747.
2. Notice of the application for transfer was published on March 11, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 2, 2015, the Department sent a letter requesting clarification from the applicant as to the proposed place of use and requested a revised map to reflect the application.
4. On February 2, 2015, the Department received amendments to the application with a revised map; these documents removed deficiencies in the application.
5. On March 26, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11747 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 26, 2015, 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.

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.

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

Certificate: 43898 in the name of LEE & PATRICIA PETTYJOHN (perfected under Permit G-3458)
Use: IRRIGATION of 63.7 ACRES and SUPPLEMENTAL IRRIGATION of 88.9 ACRES
Priority Date: MARCH 22, 1967
Rate: 1.86 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 acre-feet per acre for each acre irrigated during the irrigation season of each year; provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.
Source: A WELL within the ROCK CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	22 E	WM	15	NE SW	3520 FEET SOUTH AND 3200 FEET EAST FROM NW CORNER OF THE NE 1/4 OF THE NE 1/4 OF SECTION 16

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	22 E	WM	9	SE SE	1.4
2 S	22 E	WM	10	SW SW	0.6
2 S	22 E	WM	15	NE NW	0.1
2 S	22 E	WM	15	NW NW	6.7
2 S	22 E	WM	15	SW NW	25.6
2 S	22 E	WM	15	SE NW	7.0
2 S	22 E	WM	15	NE SW	4.9
2 S	22 E	WM	15	NW SW	11.2
2 S	22 E	WM	16	NE NE	6.0
2 S	22 E	WM	16	SE NE	0.2
Total					63.7

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	22 E	WM	9	SW NE	2.8
2 S	22 E	WM	9	SE NW	10.2
2 S	22 E	WM	9	NE SW	3.3
2 S	22 E	WM	9	NW SE	20.0
2 S	22 E	WM	9	SW SE	6.5
2 S	22 E	WM	9	SE SE	13.4
2 S	22 E	WM	15	NE NW	1.2
2 S	22 E	WM	15	NW NW	15.9

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	22 E	WM	15	SW NW	4.5
2 S	22 E	WM	15	SE NW	9.5
2 S	22 E	WM	15	NE SW	1.6
Total					88.9

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

Certificate: 48133 in the name of LEE & PATRICIA PETTYJOHN; C/O PATTY MCCOIN (perfected under Permit G-6444)

Use: SUPPLEMENTAL IRRIGATION of 26.1 ACRES

Priority Date: DECEMBER 9, 1975

Rate: 0.32 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 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: WEST WELL within the ROCK CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	22 E	WM	15	NE SW	1750 FEET NORTH AND 690 FEET WEST FROM THE SOUTH 1/4 CORNER OF SECTION 15

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	22 E	WM	9	NE SW	8.0
2 S	22 E	WM	9	SE SW	5.9
2 S	22 E	WM	9	NW SE	2.7
2 S	22 E	WM	9	SW SE	9.5
Total					26.1

8. The transfer application depicts the location of the authorized point of appropriation under Certificate 48133 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	22 E	WM	15	NE SW	3520 FEET SOUTH AND 3200 FEET EAST FROM NW CORNER OF THE NE1/4 OF THE NE1/4 OF SECTION 16

9. Transfer Application T-11747 proposes an additional point of appropriation to water right certificates 43898 and 48133, approximately 4,500 feet from the existing point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	22 E	WM	9	SE SE	40 FEET NORTH AND 800 FEET WEST FROM THE SE CORNER OF SECTION 9

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 rights. There is no information in the record that would demonstrate that the rights are 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 rights were present within the five-year period prior to submittal of Transfer Application T-11747.
12. The proposed change would not result in enlargement of the rights.
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-11747 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-11747 is approved, the final order will include the following:

1. *The additional point of appropriation proposed in Transfer Application T-11747 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 Certificates 43898 and 48133 and any related decree.*
3. *Water right certificates 43898 and 48133 are cancelled. New certificates will be issued describing those portions of the rights 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. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install an instantaneous read flow meter with totalizer, 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.*
6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2018**. 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 24 day of June 2015.


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

This Preliminary Determination was prepared by Reimbursement Authority Contractor and reviewed by Joan Smith if you have any questions with regard to the content of this Draft Preliminary Determination you may contact me at 503-986-0892 or Joan.M.SMITH@wrds.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.