



Oregon
Kate Brown, Governor

Water Resources Department
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July 13, 2015

TERRY BENGARD
20250 LAKE CALIFORNIA BLVD
COTTONWOOD, CA 96022

SUBJECT: Water Right Transfer Application T-12021

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12021. 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 and 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@wr.d.state.or.us if I may be of assistance.

Sincerely,

Sarah Henderson

Transfer Specialist
Transfer and Conservation Section

cc: T-12021
Scott White, District 17 Watermaster (via e-mail)
Ronald S. Yockim, Agent for the applicant (via e-mail)
Daryl Anderson, CWRE #005 (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-12021, Klamath 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.

Applicant

TERRY BENGARD
20250 LAKE CALIFORNIA BLVD
COTTONWOOD, CA 96022

Findings of Fact

1. On March 30, 2015, TERRY BENGARD filed an application for an additional point of appropriation under Certificate 89326. The Department assigned the application number T-12021.
2. Notice of the application for transfer was published on April 7, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 23, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12021 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 23, 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.

4. The right to be transferred is as follows:

Certificate: 89326 in the name of TERRY BENGARD (perfected under Permit G-12442)
Use: SUPPLEMENTAL IRRIGATION of 1478.2 ACRES
Priority Date: AUGUST 23, 1991
Rate: 7.55 CUBIC FEET PER SECOND

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.

Limit/Duty: The amount of water used for irrigation under this right, 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) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

Period of Use: April 15 through October 15

Source: A WELL (KLAM 10292) in the LOST RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	11.5 E	WM	26	NW SE	(KLAM 10292) - SOUTH 41 DEGREES 43 MINUTES 16 SECONDS EAST; 5628 FEET FROM THE S1/16 CORNER BETWEEN SECTIONS 22 AND 23

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
39 S	11.5 E	WM	22	SE SE		28.5
39 S	11.5 E	WM	23	SW SW		32.1
39 S	11.5 E	WM	23	SE SW		9.7
39 S	11.5 E	WM	23	SW SE		0.3
39 S	11.5 E	WM	25	SW NW		2.5
39 S	11.5 E	WM	25	SE NW		17.9
39 S	11.5 E	WM	25	NE SW		37.5
39 S	11.5 E	WM	25	NW SW		34.3
39 S	11.5 E	WM	25	SW SW		23.5
39 S	11.5 E	WM	25	SE SW		18.5
39 S	11.5 E	WM	25	NE SE		9.7
39 S	11.5 E	WM	25	NW SE		37.2
39 S	11.5 E	WM	25	SW SE		11.5
39 S	11.5 E	WM	26	NW NE		16.5
39 S	11.5 E	WM	26	SW NE		34.0
39 S	11.5 E	WM	26	SE NE		19.3
39 S	11.5 E	WM	26	NE NW		26.9
39 S	11.5 E	WM	26	NW NW		37.1
39 S	11.5 E	WM	26	SW NW		39.8
39 S	11.5 E	WM	26	SE NW		37.0
39 S	11.5 E	WM	26	NE SW		39.7
39 S	11.5 E	WM	26	NW SW		39.0
39 S	11.5 E	WM	26	SW SW		34.7
39 S	11.5 E	WM	26	SE SW		36.6
39 S	11.5 E	WM	26	NE SE		37.5
39 S	11.5 E	WM	26	NW SE		36.4
39 S	11.5 E	WM	26	SW SE		38.4
39 S	11.5 E	WM	26	SE SE		39.3
39 S	11.5 E	WM	27	NE NE		22.8
39 S	11.5 E	WM	27	SE NE		13.7
39 S	11.5 E	WM	27	SW NW	1	36.0
39 S	11.5 E	WM	27	SE NW		14.9
39 S	11.5 E	WM	27	NE SW	3	22.5

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
39 S	11.5 E	WM	27	NW SW	2	2.7
39 S	11.5 E	WM	27	NE SE		6.8
39 S	11.5 E	WM	27	NW SE	4	14.0
39 S	11.5 E	WM	27	SW SE	5	14.8
39 S	11.5 E	WM	27	SE SE	6	28.3
39 S	11.5 E	WM	34	NE NE	1	33.0
39 S	11.5 E	WM	34	SE NE	2	7.1
39 S	11.5 E	WM	35	NE NE	1	15.6
39 S	11.5 E	WM	35	NE NE	16	17.0
39 S	11.5 E	WM	35	NW NE		32.6
39 S	11.5 E	WM	35	SW NE		39.0
39 S	11.5 E	WM	35	SE NE	2	10.0
39 S	11.5 E	WM	35	SE NE	15	21.2
39 S	11.5 E	WM	35	NE NW		36.6
39 S	11.5 E	WM	35	NW NW		38.7
39 S	11.5 E	WM	35	SW NW	8	30.5
39 S	11.5 E	WM	35	SE NW	5	36.0
39 S	11.5 E	WM	35	NE SW	4	8.9
39 S	11.5 E	WM	35	NE SW	6	0.2
39 S	11.5 E	WM	35	NW SW	7	2.6
39 S	11.5 E	WM	35	SE SW	4	0.1
39 S	11.5 E	WM	35	NE SE	2	5.5
39 S	11.5 E	WM	35	NW SE	3	32.4
39 S	11.5 E	WM	35	SW SE	3	3.0
39 S	11.5 E	WM	36	NE NW		36.9
39 S	11.5 E	WM	36	NW NW	1	38.8
39 S	11.5 E	WM	36	SW NW		30.0
39 S	11.5 E	WM	36	SE NW		39.4
39 S	11.5 E	WM	36	NE SW		8.6
39 S	11.5 E	WM	36	NW SW		2.6
Total						1478.2

5. Transfer Application T-12021 proposes an additional point of appropriation approximately 1.3 miles northwest from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	11.5 E	WM	23	SW SE	(KLAM 53779) 800 FEET NORTH AND 800 FEET EAST FROM THE S1/4 CORNER OF SECTION 22

Transfer Review Criteria (OAR 690-380-4010)

6. 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.
7. 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-12021.

8. The proposed change would not result in enlargement of the right.
9. The proposed change would not result in injury to other water rights.
10. All other application requirements are met.

Determination and Proposed Action

The additional point of appropriation proposed in Transfer Application T-12021 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-12021 is approved, the final order will include the following:

1. *The additional point of appropriation proposed in Transfer Application T-12021 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 89326 and any related decree.*
3. *Water right Certificate 89326 is cancelled.*
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 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.*
 - d) *The water user shall obtain a static water-level measurement for the well during March and October of each year and report the readings to the Department by April 15 and November 15, respectively, of each year.*
6. *If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this order, 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.*

7. *Prior to using water from any well listed on this order, 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.*
8. *Prior to using the water from any well listed on this order, the wells shall be configured to allow a strictly clean water (no oil) static water level measurement 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.*
9. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
10. *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.*
11. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 13 day of July 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@wrdd.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.