



Oregon
Kate Brown, Governor

Water Resources Department
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October 23, 2015

JAMES AND SUE GILMOUR
30427 SW STELLMACHER DR.
ALBANY, OR 97321

SUBJECT: Water Right Transfer Application T-12032

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12032. 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 if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application file T-12032
J R. Johnson, District 10 Watermaster (*via e-mail*)
Scott D. Montgomery, Agent/CWRE for the applicant (*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-12032, Harney County) **PROPOSING APPROVAL OF AN**
) **ADDITIONAL POINT OF**
) **APPROPRIATION AND A CHANGE IN**
) **PLACE OF USE**

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

JAMES AND SUE GILMOUR
30427 SW STELLMACHER DR.
ALBANY OR 97321

Findings of Fact

1. On April 13, 2015, JAMES AND SUE GILMOUR filed an application for an additional point of appropriation and to change the place of use under Certificate 89795. The Department assigned the application number T-12032.
2. Notice of the application for transfer was published on April 28, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 3, 2015, the Department sent a copy of the Draft Preliminary Determination proposing to approve Transfer Application T-12032 to the applicants. The Draft Preliminary Determination cover letter set forth a deadline of October 5, 2015, for the applicants to respond. The applicants 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 portion of the right to be transferred is as follows:

Certificate: 89795 in the name of JAMES AND SUE GILMOUR (perfected under Permit G-15663)
Use: IRRIGATION OF 38.2 ACRES
Priority Date: JULY 8, 1999
Rate: 0.478 CUBIC FOOT 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 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

Period of Use: May 1 through September 30.

Source: WELL 1 (HARN 1489) within the MALHEUR LAKE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	34 E	WM	5	NW SE	WELL 1 (HARN 1489) - 2724 FEET SOUTH AND 2644 FEET EAST FROM THE NW CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
27 S	34 E	WM	5	NW SE	30.7	APOA
27 S	34 E	WM	5	NW SE	7.5	APOA/POU
Total					38.2	

5. Transfer Application T-12032 proposes an additional point of appropriation located approximately 1310 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	34 E	WM	5	SW NE	WELL 3 (HARN 52056) - 1138 FEET NORTH AND 3447 FEET EAST FROM THE W¼ CORNER OF SECTION 5

6. Transfer Application T-12032 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	
27 S	34 E	WM	5	SW NE	7.5	

Transfer Review Criteria (OAR 690-380-4010)

7. 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.
8. 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-12032.
9. The proposed changes would not result in enlargement of the right.
10. The proposed changes would not result in injury to other water rights.
11. All other application requirements are met.

Determination and Proposed Action

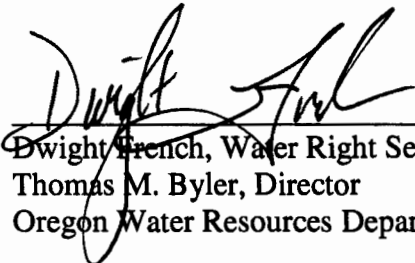
The additional point of appropriation and change in place of use proposed in Transfer Application T-12032 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12032 is approved, the final order will include the following:

- 1. The additional point of appropriation and change in place of use proposed in Transfer Application T-12032 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 Certificate 89795 and any related decree.*
- 3. Water right Certificate 89795 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
- 4. The quantity of water diverted at the proposed 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.*
- 6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
- 7. The former place of use of the transferred right shall no longer receive water under the right.*
- 8. If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this transfer, 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.*

9. *If the number, location, source, or construction of any well deviates from that proposed in this transfer application or required by transfer application conditions, this transfer may not be issued a confirming certificate, unless the Department authorizes the change in writing.*
10. *Prior to using water from any well listed on this transfer, the applicant 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.*
11. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. 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.*
12. *After satisfactory proof of beneficial use is received, a new certificate confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 27 day of October 2015.


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

This Preliminary Determination was prepared by Marcy Osborn. If you have questions about the information in this document, you may reach me at 541-523-8224 ext.228 or marcy.j.osborn@wrdd.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.