



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

January 12, 2016

VIA E-MAIL

Applicant

TIM CLEMENS
235 HWY 20 N
HINES, OR 97738
tclemens@unitedcountry.com

Receiving Landowners

BILL AND ANN LANGENFELD
34530 N. HARNEY LN.
BURNS, OR 97720
annbill7477@gmail.com

SUBJECT: Water Right Transfer Application T-12119

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12199. 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 503-986-0886 or Patrick.K.Starnes@wrp.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application file T-12119
JR Johnson, District 10 Watermaster (*via e-mail*)
Dennis R. Glender, Agent for the applicant (*via e-mail*)
Scott D. Montgomery, CWRE (#51324) (*via e-mail*)

encs

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12119, Harney County)	PROPOSING APPROVAL FOR 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

TIM CLEMENS
235 HWY 20 N
HINES, OR 97738
tclemens@unitedcountry.com

Receiving Landowner

BILL AND ANN LANGENFELD
34530 N. HARNEY LN.
BURNS, OR 97720
annbill7477@gmail.com

Findings of Fact

1. On July 31, 2015, TIM CLEMENS filed an application for an additional point of appropriation under Certificates 90523 and 90524. The Department assigned the application number T-12119.
2. Both the applicant, TIM CLEMENS, and the receiving landowners, BILL AND ANN LANGENFELD, will be responsible for the completion of the changes.
3. Notice of the application for transfer was published on August 4, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On October 23, 2015, the applicant submitted a revised application clarify the receiving landowners.
5. On October 20, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12119 to the applicant and receiving land owner. The draft Preliminary Determination cover letter set forth a deadline of November 20, 2015, for the applicant and receiving land owner to respond. The applicant requested that the completion date be extended to October 1, 2021 and for Department to proceed with the 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 first right to be transferred is as follows:

Certificate: 90523 in the name of TIM CLEMENS (perfected under Permit U-259)

Use: SUPPLEMENTAL IRRIGATION OF 260.6 ACRES

Priority Date: AUGUST 26, 1948

Rate: 3.09 CUBIC FEET PER SECOND (CFS), FURTHER LIMITED TO 0.87 CFS FROM WELL 1, 0.87 CFS FROM WELL 2, 0.87 CFS FROM WELL 3, AND 1.05 CFS FROM WELL 4

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 from direct flow 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: FOUR WELLS within the MALHEUR LAKE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
23 S	31 E	WM	1	SE NW		WELL 1 (HARN 327) - 1338 FEET SOUTH AND 3832 FEET WEST FROM THE NE CORNER OF SECTION 1
23 S	31 E	WM	1	NE NW	3	WELL 2 (HARN 51429) - 1191 FEET SOUTH AND 3626 FEET WEST FROM THE NE CORNER OF SECTION 1
23 S	31 E	WM	1	NE NW	3	WELL 3 (HARN 51575) - 395 FEET SOUTH AND 3488 FEET WEST FROM THE NE CORNER OF SECTION 1
23 S	31 E	WM	1	NE NW	3	WELL 4 - 179 FEET SOUTH AND 3484 FEET WEST FROM THE NE CORNER OF SECTION 1

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
23 S	31 E	WM	1	NW NE	2	29.8
23 S	31 E	WM	1	SW NE		31.4
23 S	31 E	WM	1	NE NW	3	35.2
23 S	31 E	WM	1	NW NW	4	9.0
23 S	31 E	WM	1	SW NW		34.0
23 S	31 E	WM	1	SE NW		40.0
23 S	31 E	WM	1	NE SW		30.3
23 S	31 E	WM	1	NW SW		28.0
23 S	31 E	WM	1	NW SE		22.9
Total						260.6

7. The proposed additional point of appropriation is described in the table below with the measured distances from the original (authorized) points of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from original well locations measured in feet(ft.)			
						WELL 1	WELL 2	WELL 3	WELL 4
23 S	31 E	WM	1	NW NW	WELL 5 (HARN 51740) - 1105 FEET SOUTH AND 4118 FEET WEST FROM THE NE CORNER OF SECTION 1	330 ft	460 ft	925 ft	1050 ft

8. The second right to be transferred is as follows:

Certificate: 90524 in the name of TIM CLEMENS (perfected under Permit G-7391)
Use: IRRIGATION OF 26.9 ACRES AND SUPPLEMENTAL IRRIGATION OF 260.6 ACRES

Priority Date: MARCH 10, 1977

Rate: 1.46 CUBIC FEET PER SECOND (CFS), FURHTER LIMITED TO 0.87 CFS FROM WELL 1, 0.87 CFS FROM WELL 2, 0.87 CFS FROM WELL 3, AND 1.05 CFS FROM WELL 4

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: FOUR WELLS within the MALHEUR LAKE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
23 S	31 E	WM	1	SE NW		WELL 1 (HARN 327) - 1338 FEET SOUTH AND 3832 FEET WEST FROM THE NE CORNER OF SECTION 1
23 S	31 E	WM	1	NE NW	3	WELL 2 (HARN 51429) - 1191 FEET SOUTH AND 3626 FEET WEST FROM THE NE CORNER OF SECTION 1
23 S	31 E	WM	1	NE NW	3	WELL 3 (HARN 51575) - 395 FEET SOUTH AND 3488 FEET WEST FROM THE NE CORNER OF SECTION 1
23 S	31 E	WM	1	NE NW	3	WELL 4 - 179 FEET SOUTH AND 3484 FEET WEST FROM THE NE CORNER OF SECTION 1

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
23 S	31 E	WM	1	NE NW	3	3.0
23 S	31 E	WM	1	NW NW	4	22.0
23 S	31 E	WM	1	SW NW		1.9
Total						26.9

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
23 S	31 E	WM	1	NW NE	2	29.8
23 S	31 E	WM	1	SW NE		31.4
23 S	31 E	WM	1	NE NW	3	35.2
23 S	31 E	WM	1	NW NW	4	9.0
23 S	31 E	WM	1	SW NW		34.0
23 S	31 E	WM	1	SE NW		40.0
23 S	31 E	WM	1	NE SW		30.3
23 S	31 E	WM	1	NW SW		28.0
23 S	31 E	WM	1	NW SE		22.9
Total						260.6

9. The proposed additional point of appropriation is described in the table below with the measured distances from the original (authorized) points of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from original well locations measured in feet(ft.)			
						WELL 1	WELL 2	WELL 3	WELL 4
23 S	31 E	WM	1	NW NW	WELL 5 (HARN 51740) - 1105 FEET SOUTH AND 4118 FEET WEST FROM THE NE CORNER OF SECTION 1	330 ft	460 ft	925 ft	1050 ft

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-12119.
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-12119 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-12119 is approved, the final order will include the following:

1. *The additional point of appropriation proposed in Transfer Application T-12119 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 90523 and 90524 and any related decree.*
3. *Water right Certificates 90523 and 90524 are cancelled.*
4. *The quantity of water diverted at the additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.*
5. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install totalizing flow meters, or, with prior approval of the Director, other suitable measuring devices at each new and existing points of appropriation.*
 - 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. *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.*
8. *Prior to using water from any well listed in this transfer, 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.*
9. *Dedicated Measuring Tube: Wells with pumps shall be equipped with a minimum 3/4-inch diameter, unobstructed, dedicated measuring tube pursuant to figure 200-5 in OAR 690-200. If a pump has been installed prior to the issuance of this transfer, and if static water levels and pumping levels can be measured using an electrical tape, then the installation of the measuring tube can be delayed until such time that water levels cannot be measured or the pump is repaired or replaced.*
10. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 13 day of January, 2016.



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@ wrd.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.