



# Oregon

Kate Brown, Governor

**Water Resources Department**  
725 Summer St NE, Suite A  
Salem, OR 97301  
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March 15, 2016

TED AND JOLEEN MCKENZIE  
87247 SYDNAM LANE  
BANDON, OR 97411

**SUBJECT:** Water Right Transfer Application T-12102

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12102. 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.

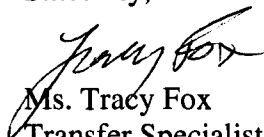
A public notice is being published in the Department's weekly simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement 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 [Tracy.L.Fox@wrd.state.or.us](mailto:Tracy.L.Fox@wrd.state.or.us) or 503-986-0827 if I may be of assistance.

Sincerely,



Ms. Tracy Fox  
Transfer Specialist  
Transfer and Conservation Section

cc: T-12102  
Gregory J. Wacker, District 19 Watermaster (*via e-mail*)  
Corey Woodruff, Agent for the applicant and CWRE (*via e-mail*)  
enclosures



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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12102, Coos County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF
	)	APPROPRIATION AND PLACE OF
	)	USE

**Authority**

Oregon Revised Statutes (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 Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicants**

TED AND JOLEEN G. MCKENZIE  
87247 SYDNAM LANE  
BANDON, OR 97411

**Findings of Fact**

1. On July 16, 2015, TED MCKENZIE filed an application for an additional point of appropriation and to change the place of use under Certificate 83305. The Department assigned the application number T-12102.
2. Notice of the application for transfer was published on July 21, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 28, 2016, the Department contacted the applicant's agent by telephone and by written correspondence (email) to notify them of the deficiencies in the application. The deficiencies being that evidence of use is needed and minor corrections appear to be needed on Table 2, the table listing the acres being transferred. It was determined that the application is actually for a change in point of appropriation as opposed to an additional point of appropriation.
4. On February 1, 2016, the applicant's agent submitted documentation and on February 19, 2016, the applicant submitted documentation, together they resolved the deficiencies. Joleen G. McKenzie was added as an applicant at this time.

5. On February 24, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12102 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 25, 2016, for the applicants to respond. The applicants requested that the completion date be extended to October 1, 2020, that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

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

**Certificate:** 83305 in the name of EDWARD L. AASEN (perfected under Permit G-11356)

**Use:** CRANBERRY OPERATIONS on 11.34 ACRES and IRRIGATION on 1.4 ACRES

**Priority Date:** NOVEMBER 29, 1990

**Rate:** 0.11 CUBIC FOOT PER SECOND (CFS), BEING 0.07 CFS FROM THE WELL AND 0.04 CFS FROM THE SUMP

**Limit/Duty:** The amount of water diverted for CRANBERRY OPERATIONS, together with amounts secured under any other water rights existing for the same lands, is limited as follows: For temperature control, 0.15 cfs per acre. For flood harvesting or pest control, 0.05 cfs per acre. For irrigation of cranberries, ONE-FORTIETH of one cfs and 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. For IRRIGATION OF ANY OTHER CROP, ONE-EIGHTIETH of one cfs and 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** ONE WELL AND ONE SUMP in the BETHEL CREEK BASIN

**Authorized Points of Appropriation (POA):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
30 S	15 W	WM	13	NW SW	SUMP: 2150 FEET NORTH AND 1045 FEET EAST FROM THE SW CORNER OF SECTION 13
30 S	15 W	WM	13	SW SW	WELL: 1140 FEET NORTH AND 290 FEET EAST FROM THE SW CORNER OF SECTION 13

**Authorized Place of Use:**

CRANBERRY OPERATIONS					
Twp	Rng	Mer	Sec	Q-Q	Acres
30 S	15 W	WM	13	NW SW	1.24
30 S	15 W	WM	13	SW SW	7.85
30 S	15 W	WM	13	SE SW	2.25
Total:					11.34

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
30 S	15 W	WM	13	SW SW	1.40

7. Transfer Application T-12102 proposes to move the authorized point of appropriation approximately 605 feet and 1075 feet from the existing points of appropriation (well and sump respectively) to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
30 S	15 W	WM	13	NW SW	SUMP 2: 1705 FEET NORTH AND 65 FEET EAST FROM THE SW CORNER OF SECTION 13

8. Transfer Application T-12102 also proposes to change the place of use of the right to:

CRANBERRY OPERATIONS						
Twp	Rng	Mer	Sec	Q-Q	Acres	POA
30 S	15 W	WM	13	NW SW	4.49	Well and Sump 2
30 S	15 W	WM	13	SW SW	6.85	Well and Sump 2
Total:					11.34	

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	POA
30 S	15 W	WM	13	SW SW	1.40	Well and Sump 2

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

9. 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.
10. 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-12102.
11. The proposed changes would not result in enlargement of the right.
12. The proposed changes would not result in injury to other water rights.
13. All other application requirements are met.

**Determination and Proposed Action**

The change in point of appropriation and change in place of use proposed in Transfer Application T-12102 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-12102 is approved, the final order will include the following:*

1. *The change in point of appropriation and change in place of use proposed in Transfer Application T-12102 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 83305 and any related decree.*

3. *Water right Certificate 83305 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 new point 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 a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each new point of appropriation.*
  - b. *The water user shall maintain the meter or measuring devices in good working order.*
  - c. *The water user shall allow the Watermaster access to the meter or measuring devices; provided however, where the meter 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. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 11 day of March, 2016.



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

This Preliminary Determination was prepared by Tracy Fox. If you have questions about the information in this document, you may reach me at 503 986-0827 or Tracy.L.Fox@wr.d.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