



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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March 28, 2016

KNESS CATTLE INC.
45859 GERBER ROAD
BONANZA OR 97623

SUBJECT: Water Right Transfer Application T-12085

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12085. 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@wrds.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application file T-12085
Watermaster District 17 (via e-mail)
Donald E. Knauer, Agent/CWRE for the applicant

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

In the Matter of Transfer Application) **PRELIMINARY DETERMINATION**
T-12085, Klamath County) **PROPOSING APPROVAL OF A**
) **CHANGE IN 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.

Applicant

KNESS CATTLE INC
45859 GERBER RD
BONANZA, OR 97623

Findings of Fact

1. On June 16, 2015, KNESS CATTLE INC filed an application to change the place of use under Certificate 47816. The Department assigned the application number T-12085.
2. Notice of the application for transfer was published on June 23, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 13, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12085 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 14, 2015, for the applicant to respond. The applicant requested to extend the completion date to October 1, 2022 and for the 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.
4. The portion of the right to be transferred is as follows:
 - Certificate:** 47816 in the names of HARRY R WAGGONER AND LUTHER R. NOBLE, G.ROGER AND KAREN S. HAMILTON (perfected under Permit G-4539)
 - Use:** IRRIGATION OF 27.6 ACRES
 - Priority Date:** MARCH 19, 1969

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.

Rate: 0.24 CUBIC FOOT 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: WELL NO 2 within the LOST RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	13 E	WM	29	NE NW	WELL NO. 2 - 100 FEET NORTH AND 60 FEET WEST FROM THE SE CORNER OF THE NE ¹ / ₄ NW ¹ / ₄ OF SECTION 29

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	13 E	WM	29	NW NW	6.8
39 S	13 E	WM	29	SW NW	14.7
39 S	13 E	WM	30	SE NE	6.1
Total					27.6

5. Transfer Application T-12085 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	13 E	WM	19	SE SE	5.4
39 S	13 E	WM	29	NE NW	1.0
39 S	13 E	WM	29	NW NW	10.0
39 S	13 E	WM	29	SW NW	9.7
39 S	13 E	WM	29	SE NW	1.5
Total					27.6

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-12085.
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 change in place of use proposed in Transfer Application T-12085 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-12085 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-12085 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 47816 and any related decree.*
3. *Water right Certificate 47816 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *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.*
 - b. *The water user shall maintain the meter or measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device are located within a private structure, the Watermaster shall request access upon reasonable notice.*
5. *The former place of use of the transferred right shall no longer receive water under the right.*
6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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.*

7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 31 day of March 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@wrд.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.