



# Oregon

Kate Brown, Governor

**Water Resources Department**

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Salem, OR 97301

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May 2, 2016

MARK AND CYDNEY McELLIGOTT  
PO BOX 331  
IONE OR 97843  
mark.jared@gmail.com

SUBJECT: Water Right Transfer Application T-12068

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12068. 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 Heppner Gazette Times 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 503-986-0886 or [Patrick.K.Starnes@wrdd.state.or.us](mailto:Patrick.K.Starnes@wrdd.state.or.us) if I may be of assistance.

Sincerely,

Kelly Starnes  
Transfer Program Analyst  
Transfer and Conservation Section

cc: Transfer Application T-12068  
Kenneth C. Thiemann, Watermaster 21 District (*via e-mail*)  
Molly Reid, Agent 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-12068, Morrow County                    )    **PROPOSING APPROVAL OF AN**  
  )    **ADDITIONAL POINT OF DIVERSION**

**Authority**

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, 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**

MATT McELLIGOTT  
49026 HWY 30  
NORTH POWDER, OR 97867  
mcmcelligott@landolakes.com

**Receiving Landowner**

MARK AND CYDNEY McELLIGOTT  
PO BOX 331  
IONE, OR 97843  
mark.jared@gmail.com

**Findings of Fact**

1. On May 26, 2015, MATT McELLIGOTT filed an application for an additional point of diversion under Certificate 195. The Department assigned the application number T-12068.
2. Notice of the application for transfer was published on June 2, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 20, 2016 the department received an amended application page clarifying the receiving landowners.
4. Mark and Cydney McElligot are the receiving landowners who will be responsible for completion of the changes.
5. On March 3, 2016, the Department sent a copy of the Draft Preliminary Determination proposing to approve Transfer Application T-12068 to the applicant. The Draft Preliminary Determination cover letter set forth a deadline of April 4, 2016, 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.

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 right to be transferred is as follows:

**Certificate:** 195 in the name of GEO W SWAGGART (confirmed by Willow Creek, Gilliam and Morrow, (F))  
**Use:** IRRIGATION OF 92.0 ACRES  
**Priority Date:** 1878  
**Rate:** 1.53 CUBIC FEET PER SECOND  
**Limit/Duty:** The amount of water to which such right is entitled and hereby confirmed for the purpose aforesaid, is limited to an amount actually beneficially used for said purpose, and shall not exceed 1.53 cubic feet per second.  
**Sources:** WILLOW CREEK AND RHEA CREEK, tributary to the COLUMBIA RIVER

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	24 E	WM	12	SW NW	17.0
1 S	24 E	WM	12	SE NW	5.0
1 S	24 E	WM	12	NE SW	28.0
1 S	24 E	WM	12	NW SW	29.0
1 S	24 E	WM	12	SE SW	13.0
Total					92.0

7. Certificate 195 does not describe the location of the point of diversion, however the Willow Creek Decree names the ditches as Jordan-Allyn and Pettys-Swaggart and information is available from the Certified Water Rights Examiner survey in the transfer application indicating that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	24 E	WM	12	NE SE	PETTYS-SWAGGART DITCH – 2320 FEET NORTH AND 355 FEET WEST FROM THE SE CORNER OF SECTION 12
1 S	24 E	WM	12	SE SW	JORDAN-ALLYN DITCH – 485 FEET NORTH AND 2235 FEET EAST FROM THE SW CORNER OF SECTION 12

8. Transfer Application T-12068 proposes an additional point of diversion approximately 3432 feet downstream from the Pettys-Swaggart ditch and 4884 feet downstream from the Jordan-Allyn ditch to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	24 E	WM	12	SW NE	2100 FEET SOUTH AND 30 FEET EAST FROM THE NW CORNER OF SECTION 12

9. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. Listed fish species are not present at the point of diversion, the originating water right diversion is not screened, cost-share funds are not currently available, and the proposed diversion may be eligible for ODFW's cost-share program. A grace period of two years is appropriate until such time as cost-share funds become available to assist in the construction of a fish screen. If cost-share funds do not become available, the water user must screen within the indicated time period regardless of the availability of cost-share funding.

***Transfer Review Criteria [OAR 690-380-4010(2)]***

10. 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.
11. A diversion structure and ditch 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-12068.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

**Determination and Proposed Action**

The additional point of diversion proposed in Transfer Application T-12068 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.


*If Transfer Application T-12068 is approved, the final order will include the following:*

1. *The additional point of diversion proposed in Transfer Application T-12068 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 195 and any related decree.*
3. *Water Right Certificate 195 is cancelled.*
4. *The quantity of water diverted at the additional point of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.*
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 diversion (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. By October 1, 2018 [Within two years after the date of this order] the water user shall install an approved fish screen at the new point of diversion. The water user may withdraw water at the new point of diversion without a screen until October 1, 2018. The water user shall provide to OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary. The water user shall maintain and operate the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.*
- 7. 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 change and full beneficial use of the water.*

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

Dated at Salem, Oregon this 3 day of May, 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 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 Water Rights Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266*

**Notice Regarding Service Members:** Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>

