



Oregon

Kate Brown, Governor

Water Resources Department

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July 25, 2016

MELVIN AND JANET ZWEYGARDT
26820 SUMMIT PRAIRIE RD
PRAIRIE CITY, OR 97869

SUBJECT: Water Right Transfer Application T-12129

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12129. 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@wrdd.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application T-12129
Eric W. Julsrud, Watermaster 4 District (*via e-mail*)
Lance Zweigardt, Agent 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-12129, Grant County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE AND
)	PARTIAL CANCELLATION OF A
)	WATER RIGHT

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

MELVIN AND JANET ZWEYGARDT
26820 SUMMIT PRAIRIE RD
PRAIRIE CITY, OR 97869

Findings of Fact

1. On August 10, 2015, MELVIN AND JANET ZWEYGARDT filed an application to change the place of use under Certificate 439. The Department assigned the application number T-12129.
2. Notice of the application for transfer was published on August 18, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 11, 2016, the applicant submitted a revised application and map.
4. On May 3, 2016, the applicant submitted a revised application and map, which added Certificate 4931 to the application.

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.
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5. On May 6, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12129 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of June 6, 2016, 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 applicants are authorized to pursue the transfer.
6. The portion of the first right to be transferred is as follows:

Certificate: 439 in the name of WILLIAM R LAWSON (perfected under Permit S-259)
Use: IRRIGATION OF 51.0 ACRES
Priority Date: MARCH 5, 1910
Rate: 0.64 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water to which such right is entitled and hereby confirmed for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes and shall not exceed 0.64 cubic feet per second, or its equivalent in case of rotation.
Source: STRAWBERRY CREEK, tributary to the JOHN DAY RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	34 E	WM	28	NW NW	26.8
13 S	34 E	WM	28	SW NW	21.3
13 S	34 E	WM	28	NW SW	2.9
Total					51.0

7. Certificate 439 does not describe the location of the point of diversion, however information is available from the John Day River Decree map surveyed October 20 to November 2, 1925 and the Strawberry Mountain Quadrangle map date 1996 indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q
14 S	34 E	WM	17	SE SE

8. Transfer Application T-12129 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	34 E	WM	33	NW NW	26.8
13 S	34 E	WM	33	SW NW	24.2
Total					51.0

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

Certificate: 4931 in the name of R J STANBRO (perfected under Permit S-4107)
Use: SUPPLEMENTAL IRRIGATION OF 35.0 ACRES
Priority Date: MAY 2, 1919
Rate: 0.44 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, is limited to ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated.

Source: STANBRO RESERVOIR, TO BE CONSTRUCTED UNDER PERMIT R-451, CERTIFICATE 4936

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Name
14 S	34 E	WM	10	SE SW	STANBRO RESERVOIR

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	34 E	WM	10	NE NE	5.0
14 S	34 E	WM	10	NW NE	5.0
14 S	34 E	WM	10	SW NE	10.0
14 S	34 E	WM	10	SE NE	10.0
14 S	34 E	WM	10	NE NW	5.0
Total					35.0

10. Transfer Application T-12129 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
13 S	34 E	WM	33	NW NE		4.4
13 S	34 E	WM	33	SW NE		7.1
13 S	34 E	WM	33	SE NW		4.4
13 S	34 E	WM	33	NE SE		11.4
13 S	34 E	WM	33	SE SE		6.3
14 S	34 E	WM			3	1.4
Total						35.0

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

11. 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.
12. A diversion structure and ditch 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-12129.
13. The proposed change would not result in enlargement of the rights.
14. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

15. On August 10, 2015, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Melvin and Janet Zweygardt. The portion of the right to be cancelled is as follows:

Certificate: 439 in the name of WILLIAM R. LAWSON (perfected under Permit S-259)
Use: IRRIGATION OF 34.6 ACRES
Priority Date: MARCH 5, 1910
Rate: 0.43 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water to which such right is entitled and hereby confirmed for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes and shall not exceed 0.43 cubic feet per second, or its equivalent in case of rotation.
Source: STRAWBERRY CREEK, tributary to the JOHN DAY RIVER

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	34 E	WM	28	NW NW	11.2
13 S	34 E	WM	28	SW NW	11.6
13 S	34 E	WM	28	NW SW	9.5
13 S	34 E	WM	28	SW SW	2.3
Total					34.6

Determination and Proposed Action

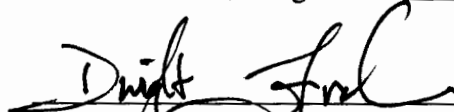
The change in place of use proposed in Transfer Application T-12129 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and OAR 690-380-5000. The portion of the right requested to be cancelled pursuant to OAR 690-380-2320 should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the requested rights will be cancelled.

If Transfer Application T-12129 is approved, the final order will include the following:

- 1. The change in place of use proposed in Transfer Application T-12129 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 439 and 4931, and any related decree.*
- 3. Water right Certificates 439 and 4931 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer and cancellation.*

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 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 is located within a private structure, the Watermaster shall request access upon reasonable notice.*
5. *The former place of use of the transferred rights shall no longer receive water under the rights.*
6. *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(s) and full beneficial use of the water.*
7. *After satisfactory proof of beneficial use is received, new certificates confirming the right transferred will be issued.*

Dated at Salem, Oregon this 22 day of July, 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@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.