



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

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August 29, 2016

Dennis and Janis Hitt
12445 HWY 140 E
Klamath Falls, OR 97603

SUBJECT: Water Right Transfer Application T-12277

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12277. 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 Herald and News 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 Department's notice *or* 30 days after the last date of newspaper publication whichever is the later.

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 503-986-0892 or Joan.M.Smith@wr.d.state.or.us if I may be of assistance.

Sincerely,

Joan Smith
Transfer Specialist
Transfer and Conservation Section

cc: T-12277
Tyler Martin, District 17 Watermaster (*via e-mail*)
Daniel B. Scalas, CWRE #88332 (*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-12277, Klamath County) **PROPOSING APPROVAL OF AN**
) **ADDITIONAL POINT OF**
) **APPROPRIATION**

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

DENNIS AND JANIS HITT
12445 HWY 140 E
KLAMATH FALLS, OR 97603

Findings of Fact

1. On February 29, 2016, DENNIS AND JANIS HITT filed an application for an additional point of appropriation under Certificate 47716. The Department assigned the application number T-12277.
2. A portion of Certificate 47716 was cancelled; the remaining portion was re-assigned a new certificate number. This application is for the portion of the right identified now as Certificate 91200.
3. Notice of the application for transfer was published on March 1, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On June 1, 2016, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12277 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of July 1, 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.

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

Certificate: 91200 in the name of DENNIS AND JANIS HITT (perfected under Permit G-6643)
Use: IRRIGATION of 122.6 ACRES
Priority Date: JANUARY 15, 1976
Rate: 1.53 CUBIC FEET PER SECOND

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.

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 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: KILGORE WELL No. 3 within the LOST RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	14 E	WM	8	SW SW	KILGORE WELL No. 3-1025 FEET NORTH AND 690 FEET EAST FROM THE SW CORNER OF SECTION 8

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	14 E	WM	8	NW NE	7.0
41 S	14 E	WM	8	NE NW	40.0
41 S	14 E	WM	8	SE NW	40.0
41 S	14 E	WM	8	NE SW	33.4
41 S	14 E	WM	8	NW SW	0.2
41 S	14 E	WM	8	NW SE	2.0
Total:					122.6

6. Transfer Application T-12277 proposes an additional point of appropriation approximately 0.5 mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	14 E	WM	8	NW SE	240 FEET SOUTH AND 285 FEET EAST FROM THE CENTER OF SECTION 8

Transfer Review Criteria (OAR 690-380-4010)

7. 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.
8. 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-12277.
9. The proposed change would not result in enlargement of the right.
10. The proposed change as conditioned would not result in injury to other water right.
11. All other application requirements are met.


Determination and Proposed Action

The additional point of appropriation proposed in Transfer Application T-12277 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-12277 is approved, the final order will include the following:

- 1. The additional point of appropriation proposed in Transfer Application T-12277 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 91200 and any related decree.*
- 3. Water right Certificate 91200 is cancelled.*
- 4. The quantity of water diverted at the additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point 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 point of appropriation 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. The proposed additional point of appropriation shall obtain groundwater solely from the predominantly volcanic-basalt unit beneath the predominantly basin fill unit by having continuous casing and continuous seal from land surface completely through the predominantly basin-fill unit and into the predominantly volcanic-basalt unit below the predominantly basin-fill unit.*
- 7. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
- 8. 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.*
- 9. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 26 day of August 2016.


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



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>

This Preliminary Determination was prepared by Joan Smith. If you have questions about the information in this document, you may reach me at (503) 986-0892 or Joan.M.SMITH@wrp.state.or.us