



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

September 8, 2016

DAVID M. AND CINDY M. TOWNSEND
10572 SW FLEMING ROAD
POWELL BUTTE, OR 97753

SUBJECT: Water Right Transfer Application T-8897

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-8897. 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@ wrd.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application file T-8897
Jeremy T. Giffin, Watermaster 11 District (*via e-mail*)
Steve Bruce, Agent for the applicant (*via e-mail*)
Leslie Clark, Central Oregon Irrigation District (*via e-mail*)
Mark & Ann Malott LLC, Landowners Tax Lot 106 (*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-8897, Crook County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN PLACE OF USE

Authority

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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicants

DAVID M. AND CINDY M. TOWNSEND
10572 SW FLEMING ROAD
POWELL BUTTE, OR 97753

Findings of Fact

Background

1. On September 28, 2001, ALBERT R. AND LITA KILPATRICK; CRAIG KILPATRICK filed an application to change the place of use under Permit G-13009. The Department assigned the application number T-8897.
2. On July 8, 2011, the Department issued Certificate 87116 confirming water use perfected under Permit G-13009.
3. The portion of the right to be transferred is as follows:

Certificate:	87116 in the name of WYNN GILBERTSON; WYNNS LAND AND LIVESTOCK LLC (perfected under Permit G-13009)
Use:	IRRIGATION OF 24.7 ACRES
Priority Date:	MARCH 31, 1995
Rate:	0.309 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 a diversion of ONE-EIGHTIETH of one cubic foot per second, 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.

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.

Period of Use: MARCH 1 THROUGH OCTOBER 31

Source: A WELL, within the DRY RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	14 E	WM	26	NW SE	750 FEET SOUTH AND 1590 FEET WEST FROM THE E¼ CORNER OF SECTION 26

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	14 E	WM	26	NE NE	0.1
14 S	14 E	WM	26	NW NE	0.1
14 S	14 E	WM	26	SW NE	3.3
14 S	14 E	WM	26	SW NW	2.7
14 S	14 E	WM	26	NW SW	6.2
14 S	14 E	WM	26	SW SW	10.2
14 S	14 E	WM	26	SE SW	0.3
14 S	14 E	WM	26	NE SE	1.8
TOTAL					24.7

4. Transfer Application T-8897 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	14 E	WM	26	SW NE	18.7
14 S	14 E	WM	26	SW NW	0.3
14 S	14 E	WM	26	SE NW	4.3
14 S	14 E	WM	26	NW SW	0.3
14 S	14 E	WM	26	NW SE	1.1
TOTAL					24.7

5. Notice of the application for transfer was published on October 8, 2001, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On February 6, 2012, the Department sent the applicants a letter containing a draft preliminary determination to approve Transfer Application T-8897. The letter requested clarification regarding the amount of acres on the transfer map and final proof map for Certificate 87116. The letter also requested reports of ownership of the "from" lands (Tax Lots 100, 101, and 106) and notarized statements of consent to the transfer from landowners not included in the transfer (if any). The letter set forth a deadline of March 7, 2012 for the applicant to submit the requested information.
7. On February 10, 2012, the letter to the applicant's address, 12789 SW Cornett Loop, Powell Butte, Oregon 97753, was returned to the Department by the U.S. Postal Service as being undeliverable and unable to forward.
8. On February 13, 2012, the Bruce Estes, the applicant's CWRE, submitted revised transfer information reconciling the difference between the transfer application map and the final proof map for Certificate 87116.

9. As of February 5, 2013, the Department had not received the requested reports of ownership from Finding No. 6 or any assignment of the transfer to new applicants.
10. On February 6, 2013, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-8897 to the applicant's CWRE. The draft Preliminary Determination cover letter set forth a deadline of March 8, 2013, for the applicant to respond. Neither the applicant nor the applicant's CWRE responded by the deadline.
11. On March 11, 2013, the Department issued a Preliminary Determination proposing to deny Transfer Application T-8897 and mailed a copy to the applicant's agent. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on March 19, 2013 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
12. On April 22, 2013, a final order denying Transfer Application T-8897 was issued and recorded at Special Order Volume 89, page 482.
13. On June 24, 2013, the applicant's agent petitioned for reconsideration of the final order. The petition was filed within the 60-day period specified by ORS 183.484(2) and requested a 60 day administrative hold to gather the previously requested material.
14. The Department has reconsidered the order recorded at Special Order Volume 89, Page 482, and has considered the request in the applicant's petition for reconsideration.
15. On October 2, 2013, the transfer application was assigned to Wynn's Land and Livestock, LLC.
16. On February 20, 2015, transfer application was assigned to David M. and Cindy M. Townsend.
17. On April 7, 2015, the Department mailed a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-8897 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of May 7, 2015, 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 applicant is authorized to pursue the transfer

Transfer Review Criteria (OAR 690-380-4010)

18. Water has been used 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.
19. 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-8897.

20. The proposed change would not result in enlargement of the right.
21. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-8897 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-8897 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-8897 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 87116 and any related decree.*
3. *Water right certificate 87116 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The former place of use of the transferred right shall no longer receive water under the right.*
5. *The approved change shall be completed and full beneficial use of the water shall be made 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.*
6. *When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 9 day of Sept 2016.


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

This Preliminary Determination was prepared by Kelly Starnes. If you have questions about the information in this document, you may reach me at 503-986-0886 or Patrick.K.Starnes@wrdd.state.or.us.