



Oregon

Kate Brown, Governor

Water Resources Department

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September 15, 2016

CAMERON, KEATON, AND LOUIS MOLT
72299 TURNOUT ROAD
BURNS, OR 97720
Melodi.Molt@gobhi.net

SUBJECT: Water Right Transfer Application T-12164

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12164. 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 Burns Times Herald 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@ 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-12164
J. R. Johnson, District 10 Watermaster (*via e-mail*)
Scott D. Montgomery, 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-12164, Harney County) **PROPOSING APPROVAL OF**
) **ADDITIONAL POINTS 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.

Applicant

CAMERON, KEATON AND LOUIS MOLT
72299 TURNOUT ROAD
BURNS OR 97720

Findings of Fact

1. On September 14, 2015, CAMERON, KEATON AND LOUIS MOLT filed an application for additional points of appropriation under Certificates 35133, 82398, and 90199. The Department assigned the application number T-12164.
2. Notice of the application for transfer was published on September 22, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. In the initial review the department found that a temporary Transfer T-11386 exists and affects a portion of the lands modified by T-12164 and T-12172. T-11386 will terminate upon approval of T-12164 and T-12172.
4. On April 20, 2016, the Department sent a copy of the Draft Preliminary Determination proposing to approve Transfer Application T-12164 to the applicants. The Draft Preliminary Determination cover letter set forth a deadline of May 20, 2016, for the applicants to respond. The applicants requested that the completion date be extended to October 1, 2022 and for 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.

5. The first right to be transferred is as follows:

Certificate: 35133 in the name of RYE GRASS RANCHES (perfected under Permit G-2117)

Use: IRRIGATION OF 157.0 ACRES

Priority Date: APRIL 18, 1962

Rate: 1.04 CUBIC FEET 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. 6 (AKA WELL 3) within the POISON CREEK SLOUGH BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	32 E	WM	29	NW NW	WELL NO. 6 (AKA WELL 3) (HARN 606) - 860 FEET SOUTH AND 1280 FEET EAST FROM THE NW CORNER OF SECTION 29

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	29	NE NW	39.0
23 S	32 E	WM	29	NW NW	39.0
23 S	32 E	WM	29	SW NW	39.0
23 S	32 E	WM	29	SE NW	40.0
Total					157.0

6. Transfer Application T-12164 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from authorized Well 6 (Well 3)
23 S	32 E	WM	30	SE NE	WELL 1 (HARN 609) - 120 FEET SOUTH AND 40 FEET EAST FROM THE CENTER OF THE NE¼ OF SECTION 30	2575 ft.
23 S	32 E	WM	30	NW NE	WELL 2 (HARN 52255) - 65 FEET SOUTH AND 2420 FEET WEST FROM THE NE CORNER OF SECTION 30	3760 ft.
23 S	32 E	WM	29	NE NW	WELL 4 (HARN 52179) - 770 FEET SOUTH AND 2310 FEET EAST FROM THE NW CORNER OF SECTION 29	1056 ft.

7. The second right to be transferred is as follows:

Certificate: 82398 in the name of JOHN PIERRE, ERNA ETHEL, AND LINDA K. WATTS (perfected under Permit G-6964)

Use: IRRIGATION OF 125.6 ACRES

Priority Date: AUGUST 24, 1976

Rate: 1.57 CUBIC FEET 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) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

Source: ONE WELL within the MALHEUR LAKE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	32 E	WM	30	SE NE	WELL 1 (HARN 609) - 120 FEET SOUTH AND 40 FEET EAST FROM THE CENTER OF THE NE¼ OF SECTION 30

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	30	NE NE	31.4
23 S	32 E	WM	30	NW NE	31.4
23 S	32 E	WM	30	SW NE	31.4
23 S	32 E	WM	30	SE NE	31.4
Total					125.6

8. Transfer Application T-12164 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from authorized Well 1
23 S	32 E	WM	30	NW NE	WELL 2 (HARN 52255) - 65 FEET SOUTH AND 2420 FEET WEST FROM THE NE CORNER OF SECTION 30	1840 ft.
23 S	32 E	WM	29	NW NW	WELL 3 (AKA WELL 6) (HARN 606) - 860 FEET SOUTH AND 1280 FEET EAST FROM THE NW CORNER OF SECTION 29	2575 ft.
23 S	32 E	WM	29	NE NW	WELL 4 (HARN 52179) - 770 FEET SOUTH AND 2310 FEET EAST FROM THE NW CORNER OF SECTION 29	2240 ft.

9. The third right to be transferred is as follows:

Certificate: 90199 in the name of JOHN PIERRE WATTS, ERNA ETHEL WATTS, AND LINDA KAY WATTS (perfected under Permit G-11830)
Use: IRRIGATION OF 30.6 ACRES
Priority Date: NOVEMBER 30, 1992
Rate: 0.38 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.
Period of Use: MARCH 1 TO OCTOBER 31
Source: A WELL within the SILVIES RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	32 E	WM	30	NW NE	WELL 1 (HARN 609) - 1313 FEET SOUTH AND 1377 FEET WEST FROM THE NE CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	30	NE NE	8.1
23 S	32 E	WM	30	NW NE	4.8
23 S	32 E	WM	30	SW NE	8.7
23 S	32 E	WM	30	SE NE	9.0
Total					30.6

10. Certificate 90199 describes the point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	32 E	WM	30	NW NE	WELL 1 (HARN 609) - 1313 FEET SOUTH AND 1377 FEET WEST FROM THE NE CORNER OF SECTION 30

Certificate 82398 and the transfer application describe the same point of appropriation as:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	32 E	WM	30	SE NE	WELL 1 (HARN 609) - 120 FEET SOUTH AND 40 FEET EAST FROM THE CENTER OF THE NE¼ OF SECTION 30

For consistency, the point of appropriation will be described as:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	32 E	WM	30	SE NE	WELL 1 (HARN 609) - 120 FEET SOUTH AND 40 FEET EAST FROM THE CENTER OF THE NE¼ OF SECTION 30

11. Transfer Application T-12164 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from authorized Well 1
23 S	32 E	WM	30	NW NE	WELL 2 (HARN 52255) - 65 FEET SOUTH AND 2420 FEET WEST FROM THE NE CORNER OF SECTION 30	1840 ft.
23 S	32 E	WM	29	NW NW	WELL 3 (AKA WELL 6) (HARN 606) - 860 FEET SOUTH AND 1280 FEET EAST FROM THE NW CORNER OF SECTION 29	2575 ft.
23 S	32 E	WM	29	NE NW	WELL 4 (HARN 52179) - 770 FEET SOUTH AND 2310 FEET EAST FROM THE NW CORNER OF SECTION 29	2240 ft.

Transfer Review Criteria (OAR 690-380-4010)

12. 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.
13. 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-12164.
14. The proposed changes would not result in enlargement of the rights.
15. The proposed changes would not result in injury to other water rights.
16. All other application requirements are met.

Determination and Proposed Action

The additional points of appropriation proposed in Transfer Application T-12164 appear 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-12164 is approved, the final order will include the following:

1. *The additional points of appropriation proposed in Transfer Application T-12164 are 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 Certificates 35133, 82398, and 90199 and any related decree.*
3. *Water right Certificates 35133, 82398, and 90199 are cancelled.*

4. *Temporary transfer T-11386 will be terminated upon approval of T-12164 and T-12172 and/or the initial termination date in the original order, whichever comes first.*
5. *The quantity of water diverted at the additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.*
6. *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.*
7. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
8. *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 changes and full beneficial use of the water.*
9. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 15 day of September, 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.