



Oregon
Kate Brown, Governor

Water Resources Department
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Salem, OR 97301
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January 23, 2017

ZACHARY SWORD
PO BOX 3002
PRINCETON, OR 97721

SUBJECT: Water Right Transfer Application T-12357

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12357. 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 503-986-0890 or Sarah.A.Henderson@oregon.gov if I may be of assistance.

Sincerely,

Sarah Henderson
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-12357
J R. Johnson, District 10 Watermaster (*via e-mail*)
John A. Short, Agent for the applicant (*via e-mail*)
Linda Lee Miller, CWRE #47708 (*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-12357, Harney County	)	PROPOSING APPROVAL OF
	)	ADDITIONAL POINTS OF
	)	APPROPRIATION AND A CHANGE IN
	)	PLACE OF USE

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

ZACHARY O. SWORD
PO BOX 3002
PRINCETON, OR 97721

Findings of Fact

1. On April 28, 2016, ZACHARY O. SWORD filed an application for additional points of appropriation and to change the place of use under Certificate 35951. The Department assigned the application number T-12357.
2. Notice of the application for transfer was published on May 3, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 24, 2016, the department contacted the applicant to request additional information pertaining to the Evidence of Use Affidavit.
4. In response to the department's June 24, 2016 communication, the applicant provided additional evidence of beneficial use indicating that water has been used over the entire authorized place of use within the last five years according to the terms and conditions of the right.
5. On August 23, 2016, the department notified the applicant of a conflict between the application map and the proposed place of use identified in the application. The department requested clarification of the proposed place of use.
6. On September 23, 2016, the applicant provided amended application pages clarifying the intended location of the proposed place of use.

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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7. On October 18, 2016, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12357 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 17, 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.
8. The portion of the right to be transferred is as follows:

Certificate: 35951 in the name of CHAS. A. BECKLEY (perfected under Permit G-1604)

Use: IRRIGATION of 97.9 ACRES

Priority Date: JUNE 1, 1960

Rate: 1.22 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: BECKLEY WELL within the MALHEUR LAKE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	34 E	WM	29	NE NW	380 FEET SOUTH AND 360 FEET WEST FROM THE N1/4 CORNER OF SECTION 29

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	34 E	WM	29	NE NW	34.4
26 S	34 E	WM	29	NW NW	17.0
26 S	34 E	WM	29	SW NW	15.5
26 S	34 E	WM	29	SE NW	30.9
26 S	34 E	WM	29	NE SW	0.1
Total					97.9

9. Transfer Application T-12357 proposes two additional points of appropriation with approximate distances from the existing point of appropriation(POA):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	~Distance from POA
26 S	34 E	WM	29	NE SW	WELL 1 - 2135 FEET NORTH AND 1433 FEET EAST FROM THE SW CORNER OF SECTION 29	0.5 mile
26 S	34 E	WM	30	SW NE	WELL 2 - 280 FEET NORTH AND 5 FEET EAST FROM THE CENTER 1/4 CORNER OF SECTION 30	1.0 mile

10. Transfer Application T-12357 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	34 E	WM	29	NE NW	31.4

Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	34 E	WM	29	NW NW	31.4
26 S	34 E	WM	29	SW NW	3.7
26 S	34 E	WM	29	SE NW	31.4
Total					97.9

Transfer Review Criteria (OAR 690-380-4010)

11. Evidence was submitted indicating that 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.
12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-12357.
13. The proposed change would not result in enlargement of the right.
14. The proposed change, as conditioned, would not result in injury to other water rights.
15. All other application requirements are met.

Determination and Proposed Action

The additional points of appropriation and change in place of use proposed in Transfer Application T-12357 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-12357 is approved, the final order will include the following:

1. *The additional points of appropriation and change in place of use proposed in Transfer Application T-12357 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 Certificate 35951 and any related decree.*
3. *Water right Certificate 35951 is cancelled.*
4. *The quantity of water diverted at the additional points 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. *In addition, the water user shall maintain a record of all water used each month, including the total number of hours of pumping, the total quantity pumped, and the categories of beneficial use to which the water is applied. The record of use shall be submitted to the Department annually, or more frequently as may be required by the Director, and shall be submitted to the Watermaster upon request.*
 - d. *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. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
7. *The former place of use of the transferred right shall no longer receive water under the right.*
8. *The well shall be continuously cased and continuously sealed to a minimum depth of five (5) feet into the volcanic/volcaniclastic rock unit. The well may not be completed in such a manner that it allows ground water to be developed from the overlying basin fill unit. If during well construction, it becomes apparent that the well can be constructed to eliminate interference with nearby shallow wells or hydraulically connected streams in a manner other than specified in this permit, the permittee can contact the Department Hydrogeologist for this permit or the Ground Water/Hydrology Section Manager to request approval of such construction. The request shall be in writing, and shall include a rough well log and a proposed construction design for approval by the Department. The request can be approved only if it is received and reviewed prior to placement of any permanent casing and sealing material. If the well is constructed first and then the request made, the requested modification will not be approved. The new well depth and construction specifications will be incorporated into any certificate issued for this permit.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2018**. 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.*
10. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 23 day of January, 2017.


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

This Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-986-0890 or Sarah.A.Henderson@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>