



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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January 23, 2017

VIA E-MAIL

ANDY ROOT
524 HWY 20 N
HINES, OR 97738

SUBJECT: Water Right Transfer Application T-12172

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12172. 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-12172
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-12172, Harney County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINTS OF
)	APPROPRIATION, A CHANGE IN
)	PLACE OF USE AND PARTIAL
)	DIMINUTION OF A WATER RIGHT

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

ANDY ROOT
524 HWY 20 N
HINES OR 97738

Findings of Fact

1. On October 2, 2015, ANDY ROOT filed an application to change the points of appropriation, change the place of use and partial diminishment of a water right under Certificates 21216, 26078, 35332, and 46262. The Department assigned the application number T-12172.
2. Notice of the application for transfer was published on October 6, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 23, 2016, the applicant submitted amended applications and maps.
4. On March 25, 2016, the applicant submitted new amended applications and maps.
5. In the initial review the department found that a temporary Transfer T-11386 exists and affects a portion of the lands modified by Transfer Applications T-12172 and T-12164. T-11386 will terminate upon approval of Transfer Applications T-12172 and T-12164.

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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6. On April 18, 2016, the Department sent a copy of the Draft Preliminary Determination proposing to approve Transfer Application T-12172 to the applicant. The Draft Preliminary Determination cover letter set forth a deadline of May 18, 2016, for the applicant to respond. The applicant 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.
7. The portion of the first right to be transferred is as follows:

Certificate: 21216 in the name of TREFFLE J DUHAIME (perfected under Permit S-19540)
Use: IRRIGATION OF 10.4 ACRES
Priority Date: JUNE 5, 1950
Rate: 0.14 CUBIC FOOT PER SECOND (CFS)
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-FORTIETH 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: POISON CREEK SLOUGH, tributary to the SILVIES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
23 S	32 E	WM	21	SW SW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	29	SW NE	10.4

8. Transfer Application T-12172 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	29	NE NE	2.1
23 S	32 E	WM	29	NW NE	4.0
23 S	32 E	WM	29	SW NE	3.9
23 S	32 E	WM	29	SE NE	0.4
Total					10.4

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

Certificate: 26078 in the names of T. J. AND BESSIE DUHAIME (perfected under Permit U-731)

Use: PRIMARY IRRIGATION OF 2.6 ACRES AND SUPPLEMENTAL IRRIGATION OF 317.4 ACRES

Priority Date: MAY 25, 1955

Rate: 2.34 CUBIC FEET PER SECOND (CFS)

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.

Sources: 3 WELLS within the POISON CREEK SLOUGH BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Name
23 S	32 E	WM	28	NW NW	WELL 1
23 S	32 E	WM	28	SW NW	WELL 2
23 S	32 E	WM	29	SE NE	WELL 3

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
23 S	32 E	WM	29	SW NE	2.2	POA
23 S	32 E	WM	29	SE NE	0.4	POA
Total					2.6	

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
23 S	32 E	WM	28	SW NW	40.0	POA
23 S	32 E	WM	28	SE NW	40.0	POA
23 S	32 E	WM	28	NE SW	40.0	POA
23 S	32 E	WM	28	NW SW	40.0	POA
23 S	32 E	WM	29	SW NE	27.4	POA
23 S	32 E	WM	29	SW NE	10.4	POA / POU
23 S	32 E	WM	29	SE NE	31.1	POA
23 S	32 E	WM	29	SE NE	8.5	POA / POU
23 S	32 E	WM	29	NE SE	31.5	POA
23 S	32 E	WM	29	NE SE	8.5	POA / POU
23 S	32 E	WM	29	NW SE	31.0	POA
23 S	32 E	WM	29	NW SE	9.0	POA / POU
Total					317.4	

10. Certificate 26078 does not describe the location of the points of diversion, however information is available from Transfer Application T-12172 and map and Certificate 35332 indicating that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	32 E	WM	28	NW NW	WELL 1 – 950 FEET SOUTH AND 950 FEET EAST FROM THE NW CORNER OF SECTION 28
23 S	32 E	WM	28	SW NW	WELL 2 – 2000 FEET SOUTH AND 630 FEET EAST FROM THE NW CORNER OF SECTION 28
23 S	32 E	WM	29	SE NE	WELL 3 – 1690 FEET SOUTH AND 920 FEET WEST FROM THE NW CORNER OF SECTION 28

11. Transfer Application T-12078 proposes to change the points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from original well locations measured in feet (ft)		
						WELL 1	WELL 2	WELL 3
23 S	32 E	WM	33	NW NW	WELL #7 - 690 FEET SOUTH AND 85 FEET EAST FROM THE NW CORNER OF SECTION 33	4880 ft	3830 ft	4100 ft
23 S	32 E	WM	32	NE NE	WELL #8 - 50 FEET SOUTH AND 160 FEET WEST FROM THE NE CORNER OF SECTION 32	4360 ft	3300 ft	3500 ft
23 S	32 E	WM	28	SW NW	WELL #9 - 2560 FEET SOUTH AND 1130 FEET EAST FROM THE NW CORNER OF SECTION 28	1580 ft	726 ft	1980 ft
23 S	32 E	WM	29	SE NE	WELL #10 - 1705 FEET SOUTH AND 800 FEET WEST FROM THE NE CORNER OF SECTION 29	1780 ft	1320 ft	150 ft

12. Transfer Application T-12172 also proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	29	SW SE	7.2
23 S	32 E	WM	29	SE SE	29.2
Total					36.4

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

Certificate: 35332 in the names of T. J. DUHAIME AND BESSIE DUHAIME (perfected under Permit G-16)

Use: SUPPLEMENTAL IRRIGATION OF 145.5 ACRES

Priority Date: AUGUST 2, 1955

Rate: 1.82 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.

Sources: DUHAIME WELLS NOS.1, 2, and 3 within the SILVIES RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	32 E	WM	28	NW NW	WELL 1 - 950 FEET SOUTH AND 950 FEET EAST FROM THE NW CORNER OF SECTION 28
23 S	32 E	WM	28	SW NW	WELL 2 - 2000 FEET SOUTH AND 630 FEET EAST FROM THE NW CORNER OF SECTION 28
23 S	32 E	WM	29	SE NE	WELL 3 - 1690 FEET SOUTH AND 920 FEET WEST FROM THE NW CORNER OF SECTION 28

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
23 S	32 E	WM	28	NE NW	39.5	POA
23 S	32 E	WM	28	NW NW	34.0	POA
23 S	32 E	WM	29	NE NE	27.4	POA
23 S	32 E	WM	29	NE NE	9.6	POA / POU
23 S	32 E	WM	29	NW NE	27.0	POA
23 S	32 E	WM	29	NW NE	8.0	POA / POU
Total					145.5	

14. Transfer Application T-12078 proposes to change the points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from original well locations measured in feet (ft)		
						WELL 1	WELL 2	WELL 3
23 S	32 E	WM	33	NW NW	WELL #7 - 690 FEET SOUTH AND 85 FEET EAST FROM THE NW CORNER OF SECTION 33	4880 ft	3830 ft	4100 ft
23 S	32 E	WM	32	NE NE	WELL #8 - 50 FEET SOUTH AND 160 FEET WEST FROM THE NE CORNER OF SECTION 32	4360 ft	3300 ft	3500 ft
23 S	32 E	WM	28	SW NW	WELL #9 - 2560 FEET SOUTH AND 1130 FEET EAST FROM THE NW CORNER OF SECTION 28	1580 ft	726 ft	1980 ft
23 S	32 E	WM	29	SE NE	WELL #10 - 1705 FEET SOUTH AND 800 FEET WEST FROM THE NE CORNER OF SECTION 29	1780 ft	1320 ft	150 ft

15. Transfer Application T-12172 also proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	29	NE NE	2.1
23 S	32 E	WM	29	NW NE	4.1
23 S	32 E	WM	29	SW SE	11.4
Total					17.6

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

Certificate: 46262 in the name of CLIFFORD FINE (perfected under Permit G-5287)
Use: IRRIGATION OF 21.9 ACRES
Priority Date: OCTOBER 21, 1970
Rate: 0.28 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, 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: ONE WELL within the SILVER CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	30 E	WM	10	SW SW	1200 FEET NORTH AND 500 FEET EAST FROM THE SW CORNER OF SECTION 10

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	30 E	WM	9	NE SE	1.9
26 S	30 E	WM	9	NW SE	2.4
26 S	30 E	WM	9	SW SE	6.8
26 S	30 E	WM	9	SE SE	10.8
Total					21.9

17. Transfer Application T-12078 proposes to change the points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from original well locations measured in miles (mi)
						WELL
23 S	32 E	WM	33	NW NW	WELL #7 - 690 FEET SOUTH AND 85 FEET EAST FROM THE NW CORNER OF SECTION 33	18.2 mi.
23 S	32 E	WM	32	NE NE	WELL #8 - 50 FEET SOUTH AND 160 FEET WEST FROM THE NE CORNER OF SECTION 32	18.3 mi.
23 S	32 E	WM	28	SW NW	WELL #9 - 2560 FEET SOUTH AND 1130 FEET EAST FROM THE NW CORNER OF SECTION 28	18.9 mi.
23 S	32 E	WM	29	SE NE	WELL #10 - 1705 FEET SOUTH AND 800 FEET WEST FROM THE NE CORNER OF SECTION 29	18.8mi.

18. Transfer Application T-12172 also proposes to change the place of use and diminish the right from primary irrigation to supplemental irrigation to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	33	NW NW	21.9

Transfer Review Criteria (OAR 690-380-4010)

19. 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.
20. 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-12172.
21. The proposed changes would not result in enlargement of the rights.
22. The proposed changes would not result in injury to other water rights.
23. All other application requirements are met.

Determination and Proposed Action

The change in points of appropriation, change in place of use, and diminution of a right proposed in Transfer Application T-12172 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-12172 is approved, the final order will include the following:

1. *The change in points of appropriation, change in place of use, and diminution of a right proposed in Transfer Application T-12172 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 21216, 26078, 35332, and 46262 and any related decree.*
3. *Water right Certificate 26078 is cancelled.*
4. *Water right Certificates 21216, 35332, and 46262 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
5. *Temporary Transfer T-11386 will be terminated upon approval of T-12172 and T-12164 and/or the initial termination date in the original order, whichever comes first.*
6. *The quantity of water diverted at the new points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.*

7. *Water use measurement conditions:*
- a. *Before water use may begin under this order, the water user shall install totalizing flow meters, or, with prior approval of the Director, other suitable measuring devices 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.*
8. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
9. *The former place of use of the transferred right shall no longer receive water under the right.*
10. *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.*
11. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 25 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 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.