



# Oregon

Kate Brown, Governor

## Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

January 26, 2017

LESTER STURM  
36121 STASTNY RD  
MALIN, OR 97632

SUBJECT: Water Right Transfer Application T-12358

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12538. 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](mailto: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-12538  
Tyler Martin, District 17 Watermaster (*via e-mail*)  
Anderson Engineering And Surveying Inc., Agent for the applicant (*via e-mail*)

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**BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE  
STATE OF OREGON**

<p>In the Matter of Transfer Application )  T-12358, Klamath County )</p>	<p>PRELIMINARY DETERMINATION  PROPOSING APPROVAL OF A  CHANGE IN PLACE OF USE )</p>
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**Authority**

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, 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**

LESTER STURM  
36121 STASTNY RD  
MALIN, OR 97632

**Findings of Fact**

1. On April 28, 2016, LESTER STURM filed an application to change the place of use under Certificates 86371, 86372, 86373, 86378, and 86379. The Department assigned the application number T-12358.
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 November 9, 2016, the agent for the applicant submitted amended application maps.
4. On December 7, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12358 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 9, 2017, 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.

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 portion of the first right to be transferred is as follows:

**Certificate:** 86371 in the name of LESTER STURM (perfected under Permit S-880)  
**Use:** IRRIGATION OF 1.36 ACRES  
**Priority Date:** SEPTEMBER 27, 1911  
**Rate:** 0.02 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 during the irrigation season of each year.  
**Source:** DRAINAGE FROM SNOW SHEDS, tributary to MILLS CREEK

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
41 S	13 E	WM	18	NE NW		0.55
41 S	13 E	WM	18	SW NW	2	0.17
41 S	13 E	WM	18	SE NW		0.09
41 S	13 E	WM	18	NE SW		0.55
Total						1.36

6. Certificate 86371 does not describe the location of the point of diversion, however information is available from the applicant's certified water right examiner (CWRE) field inspection and other water right certificates 86372, 86373, and 86379 indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	13 E	WM	7	NW SE	1330 FEET NORTH AND 610 FEET EAST FROM THE S¼ CORNER OF SECTION 7

7. Transfer Application T-12358 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
41 S	13 E	WM	18	SW NW	2	1.36

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

**Certificate:** 86372 in the name of LESTER STURM (perfected under Permit S-880)  
**Use:** IRRIGATION OF 5.02 ACRES  
**Priority Date:** SEPTEMBER 27, 1911  
**Rate:** 0.06 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 during the irrigation season of each year.  
**Source:** DRAINAGE FROM SNOW SHEDS, tributary to MILLS CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	13 E	WM	7	NW SE	1330 FEET NORTH AND 610 FEET EAST FROM THE S¼ CORNER OF SECTION 7

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
41 S	13 E	WM	18	NE NW		1.75
41 S	13 E	WM	18	NW NW	1	1.87
41 S	13 E	WM	18	SE NW		0.46
41 S	13 E	WM	18	NE SW		0.94
Total						5.02

9. Transfer Application T-12358 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
41 S	13 E	WM	18	SW NW	2	5.02

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

**Certificate:** 86373 in the name of LESTER STURM (perfected under Permit S-49909)  
**Use:** IRRIGATION OF 0.65 ACRE  
**Priority Date:** SEPTEMBER 8, 1986  
**Rate:** 0.016 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-FORTIETH 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.  
**Source:** MILLS CREEK, tributary to TULE LAKE

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	13 E	WM	7	NW SE	1330 FEET NORTH AND 610 FEET EAST FROM THE S¼ CORNER OF SECTION 7

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
41 S	13 E	WM	18	SW NW	2	0.65

11. Transfer Application T-12358 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
41 S	13 E	WM	18	SW NW	2	0.65

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

**Certificate:** 86378 in the name of LESTER STURM (perfected under Permit S-2466)  
**Use:** SUPPLEMENTAL IRRIGATION OF 1.36 ACRES  
**Priority Date:** MAY 24, 1915  
**Rate:** 0.02 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 during the irrigation season of each year.  
**Source:** SIMMS RESERVOIR, CONSTRUCTED UNDER PERMIT R-252, tributary to MILLS CREEK

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
41 S	13 E	WM	18	NE NW		0.55
41 S	13 E	WM	18	SW NW	2	0.17
41 S	13 E	WM	18	SE NW		0.09
41 S	13 E	WM	18	NE SW		0.55
Total						1.36

13. Certificate 86378 does not describe the location of the point of diversion, however information is available from the applicant's certified water right examiner (CWRE) field inspection and other water right certificates 86372, 86373, and 86379 indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	13 E	WM	7	NW SE	1330 FEET NORTH AND 610 FEET EAST FROM THE S¼ CORNER OF SECTION 7

14. Transfer Application T-12358 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
41 S	13 E	WM	18	SW NW	2	1.36

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

**Certificate:** 86379 in the name of LESTER STURM (perfected under Permit S-2466)  
**Use:** SUPPLEMENTAL IRRIGATION OF 5.02 ACRES  
**Priority Date:** MAY 24, 1915  
**Rate:** 0.06 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 during the irrigation season of each year.  
**Source:** SIMMS RESERVOIR, CONSTRUCTED UNDER PERMIT R-252, tributary to MILLS CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	13 E	WM	7	NW SE	1330 FEET NORTH AND 610 FEET EAST FROM THE S¼ CORNER OF SECTION 7

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
41 S	13 E	WM	18	NE NW		1.75
41 S	13 E	WM	18	NW NW	1	1.87
41 S	13 E	WM	18	SE NW		0.46
41 S	13 E	WM	18	NE SW		0.94
Total						5.02

16. Transfer Application T-12358 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
41 S	13 E	WM	18	SW NW	2	5.02

**Transfer Review Criteria [OAR 690-380-4010(2)]**

17. 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.
18. 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-12358.
19. The proposed change would not result in enlargement of the rights.
20. The proposed change would not result in injury to other water rights.

## **Determination and Proposed Action**

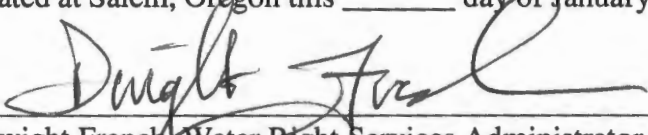
The change in place of use proposed in Transfer Application T-12358 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-12358 is approved, the final order will include the following:*

1. *The change in place of use proposed in Transfer Application T-12358 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 Certificates 86371, 86372, 86373, 86378, and 86379 and any related decree.*
3. *Water right Certificates 86371, 86372, 86373, 86378, and 86379 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
4. *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 diversion.*
  - b. *The water user shall maintain the meter or measuring device in good working order.*
  - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
5. *The former place of use of the transferred rights shall no longer receive water under the rights.*
6. *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 change and full beneficial use of the water.*

7. *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@oregon.gov](mailto:marcy.j.osborn@oregon.gov)

Protests should be addressed to the attention of Water Rights Services 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>