



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

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May 2, 2017

JAMES AND SUE GILMOUR
30427 SW STELLMACHER DR
ALBANY, OR 97320

SUBJECT: Water Right Transfer Application T-12354

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12354. 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 503-986-0827 or duff.a.martin@oregon.gov if I may be of assistance.

Sincerely,

Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application File T-12354
J R. Johnson, District 10 Watermaster (*via e-mail*)
Scott D. Montgomery, Agent for the applicant (*via e-mail*)
Arnold Mastre, Interested Party (*via e-mail*)

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

In the Matter of Transfer Application)
T-12354, Harney County)
)
)
)
)

**PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A
CHANGE IN 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

JAMES AND SUE GILMOUR
30427 SW STELLMACHER DR
ALBANY, OR 97321
riverbottomfarms@gmail.com

Interested Party

ARNOLD MASTRE
58477 HWY 78
BURNS, OR 97720
arnoldmastre@yahoo.com

Findings of Fact

1. On April 18, 2016, JAMES AND SUE GILMOUR filed an application to change the points of appropriation and to change the place of use under Certificate 91150. The Department assigned the application number T-12354.
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 17, 2016 the applicant submitted an amended application and map.
4. On June 28, 2016 the applicant submitted an amended transfer application and map.
5. On July 25, 2016, the Department sent a copy of the Draft Preliminary Determination proposing to approve Transfer Application T-12354 to the applicants. The Draft Preliminary Determination cover letter set forth a deadline of August 25, 2016, for the applicants to respond. The applicants requested that the completion date be extended to October 31, 2021 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.

6. The right to be transferred is as follows:

Certificate: 91150 in the name of ARNOLD MASTRE (perfected under Permit G-12961)

Use: IRRIGATION of 161.5 ACRES

Priority Date: APRIL 13, 1992

Rate: 2.02 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) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

Period of Use: MARCH 1 THROUGH OCTOBER 31

Source: A WELL within the HOT SPRINGS SLOUGH BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	33 E	WM	35	NW SE	2598 FEET NORTH AND 1356 FEET EAST FROM THE SE CORNER OF SECTION 35

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	33 E	WM	35	NE NE	4.2
24 S	33 E	WM	35	NW NE	8.5
24 S	33 E	WM	35	SW NE	39.9
24 S	33 E	WM	35	SE NE	35.8
24 S	33 E	WM	35	SE NW	7.6
24 S	33 E	WM	35	NE SW	4.3
24 S	33 E	WM	35	NE SE	26.6
24 S	33 E	WM	35	NW SE	34.6
Total					161.5

7. Certificate 91150 has a scrivener's error in the description of the location of the point of appropriation (POA). Information is available from the final proof survey map indicating the authorized POA is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	33 E	WM	35	NW SE	2598 FEET NORTH AND 1356 FEET WEST FROM THE SE CORNER OF SECTION 35

8. Transfer Application T-12354 proposes to move the authorized point of appropriation from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from authorized well (mi.)
26 S	33 E	WM	25	SE SE	WELL 2 - 30 FEET NORTH AND 1320 FEET WEST FROM THE SE CORNER OF SECTION 25	11.5 mi.
26 S	33 E	WM	25	SE NE	WELL 4 - 660 FEET NORTH AND 80 FEET WEST FROM THE E ¹ / ₄ CORNER OF SECTION 25	11.0 mi.
26 S	34 E	WM	7	NE NW	WELL 3B - 1295 FEET SOUTH AND 960 FEET EAST FROM THE NW CORNER OF SECTION 7	7.9 mi.
27 S	34 E	WM	5	SW NE	WELL 3 - 1138 FEET NORTH AND 3447 FEET EAST FROM THE W ¹ / ₄ CORNER OF SECTION 5	13.2 mi
27 S	34 E	WM	5	NE SW	WELL 1 - 2 FEET SOUTH AND 2621 FEET EAST FROM THE W ¹ / ₄ CORNER OF SECTION 5	13.3 mi.

9. Transfer Application T-12354 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
26 S	33 E	WM	25	SW NE		40.0
26 S	33 E	WM	25	SE NE		40.0
26 S	33 E	WM	36	NE NE		30.0
26 S	34 E	WM	6	SE SW		6.3
26 S	34 E	WM	7	NE NW		6.4
27 S	34 E	WM	5	NW NE	2	2.4
27 S	34 E	WM	5	SW NE		8.8
27 S	34 E	WM	5	SE NE		27.6
Total						161.5

Transfer Review Criteria (OAR 690-380-4010)

10. 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.
11. 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-12354.
12. The proposed changes would not result in enlargement of the right.
13. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The change in point of appropriation and change in place of use proposed in Transfer Application T-12354 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-12354 is approved, the final order will include the following:

- 1. The change in point of appropriation and change in place of use proposed in Transfer Application T-12354 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 91150 and any related decree.*
- 3. Water right Certificate 91150 is cancelled.*
- 4. The quantity of water diverted at the new points 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 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.*
- 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. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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(s) and full beneficial use of the water.*

9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 1 day of May, 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@wrđ.state.or.us.

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>