



Oregon

Kate Brown, Governor

Water Resources Department

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June 8, 2017

TOM AND JULIE JOHNS
P.O. BOX 157
COTTAGE GROVE, OR 97424

SUBJECT: Water Right Transfer Application T-12315

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12315. 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 Lanaya.F.Blakely@oregon.gov or by phone at 503-986-0888, if I may be of assistance.

Sincerely,

Lanaya Blakely
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-12315
Michael J. Mattick, District #2 Watermaster (*via e-mail*)
John A. Short, Agent for the applicant (*via e-mail*)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12315, Lane County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE

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

TOM AND JULIE JOHNS
P.O. BOX 157
COTTAGE GROVE, OR 97424

Findings of Fact

1. On March 17, 2016, TOM AND JULIE JOHNS, filed an application to change the place of use and to change the character of use under Certificate 84375 and 90626. The Department assigned the application number T-12315.
2. Notice of the application for transfer was published on March 29, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 12, 2017, the Department contacted the agent by written correspondence to notify him of the deficiencies in the application. The Department requested that the deficiencies be resolved by March 9, 2017.
4. On February 9, 2017, the applicant's agent resolved the deficiencies in the application.
5. On March 3, 2017, the Department notified the applicant's agent that transfer T-12315 could not be approved as requested. The applicants requested to change the character of use of the underlying reservoir right for supplemental use, Certificate 20626, to a use other than what is authorized by the reservoir. Consistent with Department policy, a water right to use stored water must be consistent with the uses authorized for the reservoir.
6. On April, 2017, the applicant's agent requested that the proposal to change the character of use under Certificates 84375 and 90626 be withdrawn from the application. The agent also requested that the date to complete the change be extended from one to five years.

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 April 19, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12315 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of May 19, 2017, for the applicants to respond. The applicants 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 first right to be transferred is as follows:

Certificate: 84375 in the name of TOM AND JULIE JOHNS (perfected under Permit S-50986)

Use: IRRIGATION of 43.5 ACRES

Priority Date: JANUARY 2, 1990

Rate: 0.54 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, 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: COAST FORK WILLAMETTE RIVER, a tributary of the WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
22 S	3 W	WM	18	SE SE	43	67 FEET NORTH AND 405 FEET EAST FROM THE SW CORNER OF DLC 43

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
22 S	3 W	WM	17	NW SW	43	16.3
22 S	3 W	WM	17	SW SW	43	11.3
22 S	3 W	WM	18	NE SE	43	9.7
22 S	3 W	WM	18	SE SE	43	6.2
Total						43.5

9. Transfer Application T-12315 proposes to change the place of use of Certificate 84375 to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
22 S	3 W	WM	17	NW SW	43	21.2
22 S	3 W	WM	17	SW SW	43	16.9
22 S	3 W	WM	18	NE SE	43	3.6
22 S	3 W	WM	18	SE SE	43	1.8
Total						43.5

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

Certificate: 90626 in the name of TOM AND JULIE JOHNS (perfected under Permit S-53104)
Use: SUPPLEMENTAL IRRIGATION of 43.5 ACRES
Priority Date: MAY 28, 1992
Volume: 56.387 ACRE-FEET (AF)
Limit/Duty: The amount of water used for irrigation under this right, 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 2.5 acre-feet per acre for each acre irrigated during the water service contract period each year.
Period of Use: MARCH 1 THROUGH OCTOBER 31 OR AS MAY BE FURTHER LIMITED BY BUREAU OF RECLAMATION CONTRACT
Source: COAST FORK WILLAMETTE RIVER TO BE REPLACED BY STORED WATER FROM COTTAGE GROVE RESERVOIR, CONSTRUCTED UNDER PERMIT R-1625, a tributary of WILLAMETTE RIVER

Authorized Point of Re-Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
22 S	3 W	WM	18	SE SE	43	63 FEET NORTH AND 405 FEET EAST FROM THE SW CORNER OF DLC 43

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
22 S	3 W	WM	17	NW SW	43	16.3
22 S	3 W	WM	17	SW SW	43	11.3
22 S	3 W	WM	18	NE SE	43	9.7
22 S	3 W	WM	18	SE SE	43	6.2
Total						43.5

11. Transfer Application T-12315 proposes to change the place of use of Certificate 90626 to:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
22 S	3 W	WM	17	NW SW	43	21.2
22 S	3 W	WM	17	SW SW	43	16.9
22 S	3 W	WM	18	NE SE	43	3.6
22 S	3 W	WM	18	SE SE	43	1.8
Total						43.5

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

12. 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 rights are subject to forfeiture under ORS 540.610.

13. A diversion structure and ditch 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-12315.
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.

Determination and Proposed Action


The change in place of use proposed in Transfer Application T-12315 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-12315 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-12315 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 84375, 90626, and any related decree.*
3. *Water Right Certificates 84375 and 90626 are cancelled.*
4. *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.*

5. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 7 day of June, 2017.


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

This Preliminary Determination was prepared by Lanaya Blakely. If you have questions about the information in this document you may reach me at Lanaya.F.Blakely@Oregon.gov or (503) 986-0888.

*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>