



Oregon

Kate Brown, Governor

Water Resources Department
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June 29, 2017

DAVID KENNADAY
PO BOX 69
GLIDE, OR 97443

SUBJECT: Water Right Transfer Application T-12419

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12419. 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 503-986-0827 or duff.a.martin@oregon.gov if I may be of assistance.

Sincerely,

Duff Martin
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-12419
Susan Douthit, District 15 Watermaster (*via e-mail*)
Nathan R. Reed, 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-12419, Douglas County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE AND
)	CANCELLATION OF AN ENTIRE
)	WATER RIGHT

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntary request that it be cancelled.

Applicant

DAVID KENNADAY
PO BOX 69
GLIDE OR 97443

Findings of Fact

1. On July 1, 2016, David Kennaday filed an application to change the place of use under Certificate 58722. The Department assigned the application number T-12419.
2. Notice of the application for transfer was published on July 12, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 1, 2016, an affidavit certifying that an entire water right has been abandoned and requesting cancellation of the right was received.
4. On March 13, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12419 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 13, 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.
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5. The portion of the right to be transferred is as follows:

Certificate: 58722 in the name of DAVID KENNADAY (perfected under Permit S-44991)
Use: DOMESTIC USE FOR ONE FAMILY INCLUDING THE IRRIGATION OF LAWN AND GARDEN NOT TO EXCEED 1/2 ACRE IN AREA FOR EACH FAMILY
Priority Date: DECEMBER 28, 1979
Rate: 0.005 CUBIC FOOT PER SECOND
Source: UNNAMED STREAM, a tributary of the NORTH UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	3 W	WM	3	NE SE	2200 FEET NORTH AND 1220 FEET WEST FROM THE NE CORNER OF SECTION 10

Authorized Place of Use:

DOMESTIC INCLUDING 1/2 ACRE LAWN AND GARDEN				
Twp	Rng	Mer	Sec	Q-Q
26 S	3 W	WM	10	NE NE

6. Transfer Application T-12419 proposes to change the place of use of the right to:

DOMESTIC INCLUDING 1/2 ACRE LAWN AND GARDEN				
Twp	Rng	Mer	Sec	Q-Q
26 S	3 W	WM	3	SE SE

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

7. 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.
8. A pump, pipeline and sprinkler system sufficient to use the full amount of water allowed under the existing right are present within the five-year period prior to submittal of Transfer Application T-12419.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.

Cancellation of a Water Right

- 11. On July 1, 2016, an affidavit certifying that an entire water right has been abandoned and requesting cancellation of the right was received from David and Paula Kennaday. The right to be cancelled is as follows:

Certificate: 71763 in the name of DAVID KENNADAY
Use: STORAGE FOR LIVESTOCK AND WILDLIFE
Priority Date: JANUARY 1, 1993
Rate: 0.059 ACRE-FOOT
Source: UNNAMED STREAM, a tributary of UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
26 S	3 W	WM	10	NE NE

Authorized Place of Use to be cancelled:

STORAGE FOR LIVESTOCK AND WILDLIFE				
Twp	Rng	Mer	Sec	Q-Q
26 S	3 W	WM	10	NE NE

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-12419 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the abandoned right will be cancelled.

If Transfer Application T-12419 is approved, the final order will include the following:

- 1. The change in place of use proposed in Transfer Application T-12419 is approved. The right that has been abandoned is cancelled.*
- 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 58722 and any related decree.*
- 3. Water right Certificates 58722 and 71763 are cancelled. A new certificate will be issued for that portion of the right described by Certificate 58722 not affected by this transfer.*
- 4. The former place of use of the transferred right shall no longer receive water under the right.*
- 5. 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.*

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

Dated at Salem, Oregon this 28 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 Duff Martin. If you have questions about the information in this document, you may reach me at 503-986-0827 or Duff.A.Martin@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>