



Oregon

Kate Brown, Governor

Water Resources Department

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September 29, 2017

SESTER FARMS INC.
C/O TED SESTER
33205 SE OXBOW DR
GRESHAM, OR 97080

SUBJECT: Water Right Transfer Application T-12436

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12436. 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-12436
Amy J. Kim, District 20 Watermaster (*via e-mail*)
Ted Ressler, 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-12436, Clackamas County)	PROPOSING APPROVAL
)	OF A CHANGE IN POINT 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

SESTER FARMS INC.
C/O TED SESTER
33205 SE OXBOW DR
GRESHAM, OR 97080

Findings of Fact

1. On July 21, 2016, SESTER FARMS INC. filed an application to change the point of appropriation, add an additional point of appropriation, and to change the place of use under Certificate 30659. The Department assigned the application number T-12436.
2. Notice of the application for transfer was published on July 26, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 9, 2017, the Department contacted the agent to let them know of deficiencies in the application. The agent agreed on May 10, 2017, that the application should be clarified that the additional point of appropriation should be just a change in point of appropriation from the original well to Wells 2 and 3.
4. On May 12, 2017, the Department contacted the applicant to let them know of deficiencies in the place of use. On May 22, 2017, the agent provided a statement from the applicant on use of water and submitted additional maps.

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. On July 25, 2017, the Department contacted the applicant to let them know of additional deficiencies found with regard to three acres of the place of use. On July 28, 2017, the agent provided additional information and evidence of use of the water on the authorized place of use.
6. On August 1, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12436 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 1, 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.
7. The right to be transferred is as follows:

Certificate: 30659 in the name of KATSUMI SUNAMOTO (perfected under Permit G-1645)
Use: IRRIGATION of 47 ACRES
Priority Date: JULY 20, 1960
Rate: 0.37 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL, a tributary of DEEP CREEK

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	3 E	WM	10	NE NE	360 FEET SOUTH AND 610 FEET WEST FROM THE NE CORNER OF SECTION 10

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	3 E	WM	10	NE NE	7.0
2 S	3 E	WM	10	SE NE	40.0
Total					47.0

8. Transfer Application T-12436 proposes to move the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances	Approximate Distance from Authorized Well
2 S	3 E	WM	10	NE NE	300	WELL 2 - CLAC 55502 - 470 FEET SOUTH AND 330 FEET WEST FROM THE NE CORNER OF SECTION 10	300 ft
2 S	3 E	WM	10	NE NE	300	WELL 3 - 450 FEET SOUTH AND 45 FEET WEST FROM THE NE CORNER OF SECTION 10	570 ft

9. Transfer Application T-12436 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	3 E	WM	10	NE NE	10.0
2 S	3 E	WM	10	SE NE	37.0
Total					47.0

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-12436.
- 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.
- 14. All other application requirements are met.

Determination and Proposed Action

The change in point of appropriation, an additional point of appropriation and change in place of use proposed in Transfer Application T-12436 appears 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-12436 is approved, the final order will include the following:

- 1. *The change in point of appropriation, additional point of appropriation and change in place of use proposed in Transfer Application T-12436 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 30659 and any related decree.*
- 3. *Water right Certificate 30659 is cancelled.*
- 4. *The quantity of water diverted at the new and additional points of appropriation, shall not exceed the quantity of water lawfully available at the original point(s) of appropriation.*

5. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a totalizing flowmeter, or, with prior approval of the Director, another suitable measuring device at each point of appropriation (new and existing) appropriation.*
 - 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, 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.*
9. *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 Sept 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>