



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

November 8, 2017

VIA E-MAIL

Applicant

DANIEL R. PELISSIER
8141 UPPER APPLGATE RD
JACKSONVILLE, OR 97530

SUBJECT: Water Right Transfer Application T-12622

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12622. 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 Medford Mail Tribune 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 503-986-0806 or arla.l.heard@oregon.gov if I may be of assistance.

Sincerely,

Transfer Specialist
Transfer and Conservation Section

cc: T-12622
Travis N. Kelly, District 13 Watermaster *(via e-mail)*
James Edward Hibbs, Agent for the applicant *(via e-mail)*

encs

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12622, Jackson County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF DIVERSION
)	AND PARTIAL CANCELLATION OF
)	A 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 voluntarily request that it be cancelled.

Applicant

DANIEL R. PELISSIER
8141 UPPER APPLGATE RD
JACKSONVILLE, OR 97530

Findings of Fact

1. On March 24, 2017, DANIEL R. PELISSIER filed an application for an additional point of diversion under Certificate 32829. The Department assigned the application number T-12622.
2. Notice of the application for transfer was published on April 4, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 20 2017, the Department notified the applicant and the agent for the applicant for deficiencies in the application and map.
4. On July 24, 2017, the agent for the applicant submitted a revised application and map and an affidavit for a partial cancellation of Certificate 32829 addressing any remaining deficiencies.
5. On October 2, 2017, the Department e-mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12622 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 2, 2017, for the applicant to respond. On October 12, 2017, the applicant requested the name Swayne Ditch be removed from the description of the point of diversion and that the Department proceed with issuance

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.
--

of the Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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

Certificate: 32829 in the name of WILBUR W CAMERON (confirmed by the Rogue River Decree Volume 16, at page 523)
Use: IRRIGATION OF 3.79 ACRES
Priority Date: 1908
Rate: 0.08 CUBIC FOOT PER SECOND
Source: APPLGATE RIVER, a tributary of the ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
40 S	3 W	WM	5	SW SW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	3 W	WM	33	SE NW	3.79

7. The applicant has submitted information that better described the authorized point of diversion as being:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	3 W	WM	5	SW SW	1000 FEET NORTH AND 1190 FEET EAST FROM THE SOUTHWEST CORNER OF SECTION 5

8. Transfer Application T-12622 proposes an additional point of diversion approximately two miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	3 W	WM	33	SW NE	2070 FEET SOUTH OF THE N¼ OF SECTION 33

9. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

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 diversion structure and ditch 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-12622.
12. The proposed change would not result in enlargement of the right.

13. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

14. On July 24, 2017, the Department received an affidavit from the landowner certifying that a portion of a water right has been abandoned and requesting cancellation of a portion of the right. The portion of the right to be cancelled is as follows:

Certificate: 32829 in the name of WILBUR W CAMERON (confirmed by the Rogue River Decree Volume 16, at page 523)
Use: IRRIGATION OF 0.71 ACRE
Priority Date: 1908
Rate: 0.01 CUBIC FOOT PER SECOND
Source: APPELEGATE RIVER, a tributary of the ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
40 S	3 W	WM	5	SW SW

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acre
39 S	3 W	WM	33	SE NW	0.71

Determination and Proposed Action

The additional point of diversion proposed in Transfer Application T-12622 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.

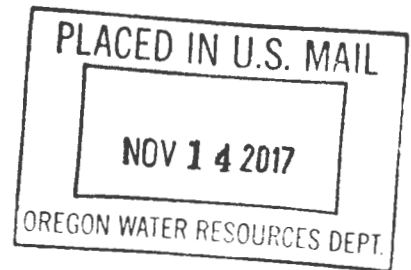
If Transfer Application T-12622 is approved, the final order will include the following:

1. *The additional point of diversion proposed in Transfer Application T-12622 is approved. The portion of 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 32829 and any related decree.*
3. *Water right Certificate 32829 is cancelled.*
4. *The quantity of water diverted at the additional point of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *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 new point of diversion.*

- 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. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*
- The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2019**. 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.*
8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

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


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



This Preliminary Determination was prepared by Arla Heard. If you have questions about the information in this document, you may reach me at 503-986-0806 or Arla.L.Heard@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>