



Oregon

Kate Brown, Governor

Water Resources Department

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November 27, 2017

Applicant

DAYSPRING PARTNERS LLC
15350 SW SEQUOIA PARKWAY, SUITE 250
PORTLAND OR 97224

Agent

SCHWABE, WILLIAMSON & WYATT
C/O SHONEE LANGFORD
530 CENTER STREET NE, SUITE 400
SALEM OR 97301

SUBJECT: Water Right Transfer Application T-12612

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12612. 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 503-986-0886 or Patrick.K.Starnes@oregon.gov if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application file T-12612
Eric Julsrud, Watermaster 4 District [REDACTED]
Steve Bruce, CWRE #439 for the applicant [REDACTED]

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12612, Wheeler County	)	PROPOSING APPROVAL OF
	)	CHANGES 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.

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Findings of Fact

1. On March 20, 2017, DAYSPRING PARTNERS, LLC filed an application to change the place of use under Certificates 88259, 88260, 88261, 88262 and 88263. The Department assigned the application number T-12612.
2. Notice of the application for transfer was published on March 28, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 28, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12612 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 28, 2017, for the applicant to respond. On October 3, 2017, the agent for 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 first right to be transferred is as follows:

Certificate: 88259 in the name of DAYSPRING PARTNERS LLC (confirmed by John Day River decree (F))
Use: IRRIGATION OF 7.6 ACRES
Priority Date: 1887
Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed ONE-FORTIETH CUBIC FOOT PER SECOND PER ACRE IRRIGATED TO JUNE 1 AND ONE-EIGHTIETH CUBIC FOOT PER SECOND PER ACRE THEREAFTER; FURTHER LIMITED TO ONE ACRE-FOOT PER CALENDAR MONTH TO JUNE 1 AND 4.0 ACRE-FEET PER ACRE DURING APRIL 1 TO SEPTEMBER 30, MEASURED AT THE POINT OF DIVERSION
Source: HIGH CREEK, tributary to ROCK CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	24 E	WM	14	NW NW	HIGH CREEK POD - 480 FEET SOUTH AND 1220 FEET EAST FROM THE NW CORNER OF SECTION 14

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	24 E	WM	11	NE SW	3.2
13 S	24 E	WM	11	NW SW	2.2
13 S	24 E	WM	11	SW SW	1.2
13 S	24 E	WM	11	SE SW	1.0
Total					7.6

6. Transfer Application T-12612 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	24 E	WM	11	SE SW	4.6
13 S	24 E	WM	14	NE NW	3.0
Total					7.6

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

Certificate: 88260 in the name of DAYSPRING PARTNERS LLC (confirmed by John Day River decree (F))
Use: SUPPLEMENTAL IRRIGATION OF 7.6 ACRES
Priority Date: 1899
Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed ONE-FORTIETH CUBIC FOOT PER SECOND PER ACRE IRRIGATED TO JUNE 1 AND ONE-EIGHTIETH CUBIC FOOT PER SECOND PER ACRE THEREAFTER; FURTHER LIMITED TO ONE ACRE-FOOT PER CALENDAR MONTH TO JUNE 1 AND 4.0 ACRE-FEET PER ACRE DURING

APRIL 1 TO SEPTEMBER 30, MEASURED AT THE POINT OF
DIVERSION

Sources: SPRING AND ROCK CREEK, tributaries to the JOHN DAY RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	24 E	WM	14	SW NW	UPPER STICE DITCH POD - 1960 FEET SOUTH AND 2300 FEET WEST FROM THE N¼ CORNER OF SECTION 14

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	24 E	WM	11	NE SW	3.2
13 S	24 E	WM	11	NW SW	2.2
13 S	24 E	WM	11	SW SW	1.2
13 S	24 E	WM	11	SE SW	1.0
Total					7.6

8. Transfer Application T-12612 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	24 E	WM	11	SE SW	4.6
13 S	24 E	WM	14	NE NW	3.0
Total					7.6

9. The third right to be transferred is as follows:

Certificate: 88261 in the name of DAYSPRING PARTNERS LLC (perfected under Permit S-22983)

Use: SUPPLEMENTAL IRRIGATION OF 7.6 ACRES

Priority Date: APRIL 30, 1954

Rate: 0.125 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-FORTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: ROCK CREEK, tributary to JOHN DAY RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	24 E	WM	14	SW NW	UPPER STICE DITCH POD - 1960 FEET SOUTH AND 2300 FEET WEST FROM THE N¼ CORNER OF SECTION 14
13 S	24 E	WM	27	SW NE	POD C -1460 FEET SOUTH AND 1290 FEET EAST FROM THE N¼ CORNER OF SECTION 27

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	24 E	WM	11	NE SW	3.2
13 S	24 E	WM	11	NW SW	2.2
13 S	24 E	WM	11	SW SW	1.2
13 S	24 E	WM	11	SE SW	1.0
Total					7.6

10. Certificate 88261 describes the authorized point of diversion POD C on Rock Creek as follows: SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 27, T13S, R24E, WM, 1460 Feet South and 1290 Feet East from N $\frac{1}{4}$ Corner, Section 27. However, the current 2014 U.S. Department of Agriculture Farm Service Agency (USDA/FSA), National Agriculture Imagery Program (NAIP) images and the current Certified Water Rights Examiner's map, based on a recent field visit and subsequent survey indicates that the original diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	24 E	WM	27	SW NE	POD C - 1460 FEET SOUTH AND 1020 FEET EAST FROM THE N $\frac{1}{4}$ CORNER OF SECTION 27

11. Transfer Application T-12612 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	24 E	WM	11	SE SW	4.6
13 S	24 E	WM	14	NE NW	3.0
Total					7.6

12. The fourth water right to be transferred is as follows:

Certificate: 88262 in the name of DAYSPRING PARTNERS LLC (perfected under Permit S-48967)

Use: SUPPLEMENTAL IRRIGATION OF 7.6 ACRES

Priority Date: OCTOBER 16, 1984

Volume: 7.6 ACRE-FEET

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 not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year from storage from FROG POND RESERVOIR constructed under permit R-10035, provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation herein.

Source: FROG POND RESERVOIR, tributary to ROCK CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	24 E	WM	16	NE NE	210 FEET SOUTH AND 940 FEET WEST FROM THE NE CORNER OF SECTION 16

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	24 E	WM	11	NE SW	3.2
13 S	24 E	WM	11	NW SW	2.2
13 S	24 E	WM	11	SW SW	1.2
13 S	24 E	WM	11	SE SW	1.0
Total					7.6

13. Transfer Application T-12612 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	24 E	WM	11	SE SW	4.6
13 S	24 E	WM	14	NE NW	3.0
Total					7.6

14. The fifth right to be transferred is as follows:

Certificate: 88263 in the name of DAYSPRING PARTNERS LLC (perfected under Permit S-49763)

Use: SUPPLEMENTAL IRRIGATION OF 7.6 ACRES

Priority Date: AUGUST 6, 1986

Rate: 0.063 CUBIC FOOT PER SECOND FROM THE UNNAMED DRAINAGE AND 11.56 ACRE FEET STORED WATER FROM BEAVER POND RESERVOIR

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 not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from the reservoir constructed under Permit R-10786, provided further the right allowed herein shall be limited to any deficiency in the available supply of the prior right existing for the same land and shall not exceed the limitation allowed herein.

Sources: UNNAMED DRAINAGEWAY, ROCK CREEK AND BEAVER POND RESERVOIR, tributaries to the JOHN DAY RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	24 E	WM	14	NE SW	POD LL - 3380 FEET SOUTH AND 2280 FEET WEST FROM THE N¼ CORNER OF SECTION 14

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	24 E	WM	11	NE SW	3.2
13 S	24 E	WM	11	NW SW	2.2
13 S	24 E	WM	11	SW SW	1.2
13 S	24 E	WM	11	SE SW	1.0
Total					7.6

15. Certificate 88263 describes the authorized point of diversion for Beaver Pond Reservoir as follows: NE¼ SW¼, Section 14, T13S, R24E, WM, 3380 Feet South and 2280 Feet West from N¼ Corner, Section 14. However, the current 2014 U.S. Department of Agriculture Farm Service Agency (USDA/FSA), National Agriculture Imagery Program (NAIP) images and the current Certified Water Rights Examiner's map, based on a recent field visit and subsequent survey indicates that the original diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	24 E	WM	14	NW SW	POD LL - 3380 FEET SOUTH AND 2440 FEET WEST FROM THE N¼ CORNER OF SECTION 14

16. The transfer Application T-12612 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	24 E	WM	11	SE SW	4.6
13 S	24 E	WM	14	NE NW	3.0
Total					7.6

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

17. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
18. Diversion structures, ditches, pipelines and water delivery systems sufficient to use the full amounts of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-12612.
19. The proposed changes would not result in enlargement of the rights
20. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The changes in place of use proposed in Transfer Application T-12612 appear 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.

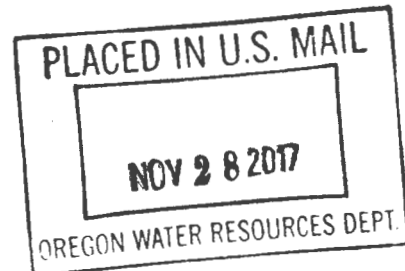
If Transfer Application T-12612 is approved, the final order will include the following:

1. *The changes in place of use proposed in Transfer Application T-12612 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 Certificates 88259, 88260, 88261, 88262, and 88263 and any related decree.*
3. *Water right Certificates 88259, 88260, 88261, 88262, and 88263 are cancelled.*

4. *Water use measurement conditions: All current, existing flow-meters or other water measurement devices shall be maintained in good working order and the water user shall allow the Watermaster access to the meters or measuring device; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
5. *The former places of use of the transferred rights shall no longer receive water under the rights.*
6. *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 changes and full beneficial use of the water.*
7. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 22 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 Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@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>