



Oregon
Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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January 24, 2018

James Nasset
Kelsey Bigelow
2267 Forest Creek Rd
Jacksonville, OR 97530

SUBJECT: Water Right Transfer Application T-12521

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12521. 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 Jessica.L.Joye@oregon.gov or by phone at 503-986-0814, if I may be of assistance.

Sincerely,

A handwritten signature in cursive script that reads "Jessica Joye".

Jessica Joye
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application T-12521
Shavon Haynes, District 13 Watermaster (*via e-mail*)
Scott D. Fein, Agent

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12521, Jackson County)	PROPOSING APPROVAL OF A
)	CHANGE IN CHARACTER OF USE
)	AND 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.

Applicants

JAMES NASSET
KELSEY BIGELOW
2267 FOREST CREEK RD
JACKSONVILLE, OR 97530

Findings of Fact

1. On October 31, 2016, JAMES NASSET AND KELSEY BIGELOW filed an application to change the place of use and to change the character of use under Certificate 20637. The Department assigned the application number T-12521.
2. Notice of the application for transfer was published on November 8, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 8, 2017, the Department contacted the applicant's agent seeking clarification of the recognized survey corner for the point of diversion.
4. On November 8, 2017, the applicant's agent provided clarification of the recognized survey corner for the point of diversion.

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 November 20, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12521 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of December 20, 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.

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

Certificate: 20637 in the name of MRS. GERTRUDE WINNINGHAM
(perfected under Permit S-17437)
Use: DOMESTIC USE FOR ONE FAMILY
Priority Date: DECEMBER 18, 1946
Rate: 0.01 CUBIC FOOT PER SECOND
Source: WINNINGHAM SPRING, a tributary of Rogue River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
38 S	3 W	WM	10	SW NW

Authorized Place of Use:

DOMESTIC USE				
Twp	Rng	Mer	Sec	Q-Q
38 S	3 W	WM	10	SE NW

7. Certificate 20637 does not describe the location of the point of diversion, however, information is available from the applicants' agent indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	3 W	WM	10	SW NW	200 FEET NORTH AND 1500 FEET WEST FROM THE C1/4 CORNER OF SECTION 10

8. Transfer Application T-12521 proposes to change the character of use to nursery use.

9. Transfer Application T-12521 also proposes to change the place of use of the right to:

NURSERY USE					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	3 W	WM	10	SE NW	4.5

10. Certificate 20637 does not specify the period of allowed use; however, domestic use is generally considered a year-round use.

11. The new proposed nursery use shall be limited to a rate of not to exceed 0.01 cfs and shall be limited to a total volume diverted of 7.2 acre-feet per year, being further limited to 1.6 acre feet per acre per year.

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 right is subject to forfeiture under ORS 540.610.
13. 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-12521.
14. The proposed changes, as conditioned, would not result in enlargement of the right.
15. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

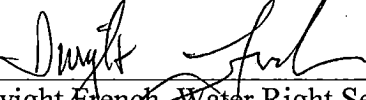
The changes in place of use and character of use proposed in Transfer Application T-12521 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-12521 is approved, the final order will include the following:

1. *The changes in place of use and character of use proposed in Transfer Application T-12521 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 20637 and any related decree.*
3. *The proposed nursery use shall be further limited such that:*
 - a) *The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.0022 cubic foot per second per acre and 1.6 acre feet per acre per year.*
 - b) *For the irrigation of containerized nursery plants, the amount of water diverted is limited to 0.01 one cubic foot per second (or its equivalent) and 1.6 acre feet per acre per year.*
 - c) *For the irrigation of in-ground nursery plants, the amount of water diverted is limited to 0.01 cubic foot per second (or its equivalent) and 1.6 acre feet per acre per year.*
 - d) *For the irrigation of any other crop, the amount of water diverted is limited to 0.01 cubic foot per second (or its equivalent) and 1.6 acre feet per acre during the irrigation season of each year.*

4. *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 the existing 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.*
5. *The former place of use of the transferred right shall no longer receive water under the right.*
6. *Water right Certificate 20637 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
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 changes 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 JAN 24 2018.


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

This Preliminary Determination was prepared by Jessica Joye. If you have questions about the information in this document, you may reach me at 503-986-0814 or Jessica.L.Joye@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>