

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12530, Klamath County)	PROPOSING APPROVAL OF 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

Robert R. Nieslanik
Carrie Rose and Stephen P. Tenold
35429 McCartie Lane
Bonanza, OR 97623

Agent

Adkins Consulting Engineering, LLC
Attn: Dan Scalas, Agent/CWRE
2950 Shasta Way
Klamath Falls, OR 97603

Findings of Fact

1. On December 8, 2016, Robert R. Nieslanik, Stephen P. and Carrie Rose Tenold filed an application to change the place of use under Certificate 47610. The Department assigned the application number T-12530.
2. Notice of the application for transfer was published on, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 15, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12530 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 15, 2018, for the applicant to respond. On December 29, 2017, the agent for the applicant requested the Department continue with the transfer, proceed with issuance of the 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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4. The portion of the right to be transferred is as follows:

Certificate: 47610 in the name of CAMERON A. CURTISS (perfected under Permit G-6814)
Use: IRRIGATION of 14.4 ACRES
Priority Date: MAY 10, 1976
Rate: 0.18 CUBIC FOOT PER SECOND (cfs)
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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL, within the LOST RIVER basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
39 S	11 E	WM	12	NW NW	200 FEET SOUTH AND 50 FEET EAST FROM THE NW CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
39 S	11 E	WM	1	SE SW	1.4
39 S	11 E	WM	12	NW NE	6.6
39 S	11 E	WM	12	SW NE	3.2
39 S	11 E	WM	12	NE NW	2.2
39 S	11 E	WM	12	SE NW	1.0
Total:					14.4

5. Transfer Application T-12530 proposes to change the place of use of the above described right to:

Proposed Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
39 S	11 E	WM	12	SW NE	0.6
39 S	11 E	WM	12	NW SE	13.8
Total:					14.4

Transfer Review Criteria (OAR 690-380-4010)

6. Water has been used within the last five years prior to the submittal of Transfer Application T-12530 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.
7. A well, 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-12530.

8. The proposed change would not result in enlargement of the right.
9. The proposed change would not result in injury to other water rights.
10. All other application requirements are met.

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-12530 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-12530 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-12530 is 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 47610 and any related decree.*
3. *Water right Certificate 47610 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The former place of use of the transferred right shall no longer receive water under the right.*
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 the point of appropriation.*
 - b. *The water user shall maintain the meter or measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *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.*

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

Dated at Salem, Oregon this 22 day of March 2018.



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

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.

This Preliminary Determination was prepared by .

NOTICE TO ACTIVE DUTY SERVICE MEMBERS: Active duty service members have a right to stay these proceedings under the federal Service members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

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.