

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12638, Harney County)	PROPOSING APPROVAL OF
)	ADDITIONAL POINTS OF
)	APPROPRIATION, A CHANGE IN
)	POINTS 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

ANDY ROOT
524 HWY 20 N
HINES, OR 97738

Findings of Fact

1. On April 10, 2017, ANDY ROOT filed an application for additional points of appropriation, a change in points of appropriation and a change in place of use under Certificates 92942 and 82846. The Department assigned the application number T-12638.
2. Notice of the application for transfer was published on April 18, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 22, 2018, the agent for the applicant submitted an amended map.
4. On February 26, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12638 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 26, 2018, for the applicant to respond. The applicant requested the completion date be extended to October 1, 2024 and for the Department to 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: 92942 in the name of CLIFFORD FINE (perfected under Permit G-5287)
Use: IRRIGATION of 128.1 ACRES
Priority Date: OCTOBER 21, 1970
Rate: 1.6 CUBIC FEET 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: ONE WELL within the SILVER CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	30 E	WM	10	SW SW	1200 FEET NORTH AND 500 FEET EAST FROM THE SW CORNER OF SECTION 10

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	30 E	WM	9	NE SE	28.1
26 S	30 E	WM	9	NW SE	37.6
26 S	30 E	WM	9	SW SE	33.2
26 S	30 E	WM	9	SE SE	29.2
Total					128.1

6. Transfer Application T-12638 proposes to move the authorized points of appropriation. The table below describes the location of the proposed points of appropriation with the measured distances from the original (authorized) point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from the original well location measured in feet (ft)
26 S	30 E	WM	9	SW NW	WELL #2 - 1330 FEET SOUTH AND 65 FEET EAST FROM THE NW CORNER OF SECTION 9	6400 ft.
26 S	30 E	WM	9	SW SE	WELL #3 - 1306 FEET NORTH AND 1416 FEET WEST FROM THE SE CORNER OF SECTION 9	1980 ft.
26 S	30 E	WM	9	SW NE	WELL #4 - 2407 FEET SOUTH AND 1732 FEET WEST FROM THE NE CORNER OF SECTION 9	2825 ft.
26 S	30 E	WM	9	SW NE	WELL #20 - 1975 FEET SOUTH AND 1525 FEET WEST FROM THE NE CORNER OF SECTION 9	2975 ft.

7. Transfer Application T-12638 also proposes to reconfigure (change) the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	30 E	WM	9	NE SE	28.1
26 S	30 E	WM	9	NW SE	37.6
26 S	30 E	WM	9	SW SE	33.2
26 S	30 E	WM	9	SE SE	29.2
Total					128.1

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

Certificate: 82846 in the name of RATTLESNAKE CREEK LAND AND CATTLE CO., LLC (perfected under Permit G-9419)

Use: IRRIGATION of 304.6 ACRES AND SUPPLEMENTAL IRRIGATION of 128.1 ACRES

Priority Date: APRIL 10, 1981

Rate: 5.41 CUBIC FEET PER SECOND (CFS), BEING 3.13 CFS FROM WELL 1 FOR IRRIGATION OF 250.0 ACRES, 0.71 CFS FROM WELL 2 FOR IRRIGATION OF 52.4 ACRES AND SUPPLEMENTAL IRRIGATION OF 4.7 ACRES, 1.57 CFS FROM WELL 3 FOR THE IRRIGATION OF 2.2 ACRES AND SUPPLEMENTAL IRRIGATION OF 123.4 ACRES

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 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: THREE WELLS within the MALHEUR LAKE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	30 E	WM	9	SW NW	WELL #1 (AKA WELL #2) - 1330 FEET SOUTH AND 65 FEET EAST FROM THE NW CORNER OF SECTION 9
26 S	30 E	WM	9	SW NE	WELL #2 (AKA WELL #4) - 2407 FEET SOUTH AND 1732 FEET WEST FROM THE NE CORNER OF SECTION 9
26 S	30 E	WM	9	SW SE	WELL #3 - 1306 FEET NORTH AND 1416 FEET WEST FROM THE SE CORNER OF SECTION 9

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	POA
26 S	30 E	WM	8	NE NE	29.9	WELL #1
26 S	30 E	WM	8	SE NE	30.3	WELL #1
26 S	30 E	WM	9	SW NE	0.1	WELL #3
26 S	30 E	WM	9	SW NE	22.6	WELL #2
26 S	30 E	WM	9	SE NE	0.1	WELL #3
26 S	30 E	WM	9	NW NW	32.8	WELL #1
26 S	30 E	WM	9	SW NW	33.9	WELL #1
26 S	30 E	WM	9	SE NW	0.2	WELL #1
26 S	30 E	WM	9	SE NW	24.3	WELL #2
26 S	30 E	WM	9	NE SW	5.5	WELL #2
26 S	30 E	WM	9	NE SW	0.1	WELL #3
26 S	30 E	WM	9	NE SW	29.1	WELL #1
26 S	30 E	WM	9	NW SW	33.7	WELL #1
26 S	30 E	WM	9	SW SW	32.6	WELL #1
26 S	30 E	WM	9	SE SW	27.5	WELL #1
26 S	30 E	WM	9	SE SW	0.1	WELL #3
26 S	30 E	WM	9	NE SE	1.8	WELL #3
Total					304.6	

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	POA
26 S	30 E	WM	9	NE SE	28.1	WELL #3
26 S	30 E	WM	9	NW SE	32.9	WELL #3
26 S	30 E	WM	9	NW SE	4.7	WELL #2
26 S	30 E	WM	9	SW SE	33.2	WELL #3
26 S	30 E	WM	9	SE SE	29.2	WELL #3
Total					128.1	

9. Transfer Application T-12638 proposes (additional points of appropriation) to irrigate from any one or combination of the following wells:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from original well locations measured in feet (ft)		
						WELL #1 (AKA WELL #2)	WELL #2 (AKA WELL #4)	WELL #3
26 S	30 E	WM	9	SW NW	WELL #2 (AKA WELL #1) - 1330 FEET SOUTH AND 65 FEET EAST FROM THE NW CORNER OF SECTION 9	X	3680 ft.	4650 ft.
26 S	30 E	WM	9	SW SE	WELL #3 - 1306 FEET NORTH AND 1416 FEET WEST FROM THE SE CORNER OF SECTION 9	4660 ft.	1635 ft.	X
26 S	30 E	WM	9	SW NE	WELL #4 (AKA WELL #2) - 2407 FEET SOUTH AND 1732 FEET WEST FROM THE NE CORNER OF SECTION 9	3660 ft.	X	1635 ft.
26 S	30 E	WM	9	SW NE	WELL #20 - 1975 FEET SOUTH AND 1525 FEET WEST FROM THE NE CORNER OF SECTION 9	3775 ft.	465 ft.	2020 ft.

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 rights. There is no information in the record that would demonstrate that the rights are 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 rights were present within the five-year period prior to submittal of Transfer Application T-12638.
12. The proposed changes would not result in enlargement of the rights.
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 additional points of appropriation, change in points of appropriation and change in place of use proposed in Transfer Application T-12638 appear 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-12638 is approved, the final order will include the following:

- 1. The additional points of appropriation, change in points of appropriation and change in place of use proposed in Transfer Application T-12638 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 92942 and 82846 and any related decree.*
- 3. Water right Certificate 92942 and 82846 are cancelled.*
- 4. The quantity of water diverted at the new and additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.*
- 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 point of appropriation (new and existing).*
 - 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, 2024**. 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, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this JUN 21 2018,



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

This Preliminary Determination was prepared by Marcy Osborn. If you have questions about the information in this document, you may reach me at 541-523-8224 ext.228 or marcy.j.osborn@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>