

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12803, Harney County)	PROPOSING APPROVAL OF
)	ADDITIONAL POINTS OF
)	APPROPRIATION

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

BILL AND LORI PEILA
PO BOX 723
HINES, OR 97738

Findings of Fact

1. On December 21, 2017, BILL AND LORI PEILA filed an application for additional points of appropriation under Certificate 46177. The Department assigned the application number T-12803.
2. Notice of the application for transfer was published on January 2, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 22, 2018, the agent for the applicant submitted an amended transfer map.
4. On May 23, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12803 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of June 25, 2018, for the applicants to respond. The applicants requested that the completion date be extended to October 1, 2020 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 portion of the right to be transferred is as follows:

Certificate: 46177 in the name of HURLBURT RANCHES, INC. (perfected under Permit G-5199)
Use: SUPPLEMENTAL IRRIGATION OF 58.2 ACRES
Priority Date: JUNE 22, 1973
Rate: 0.49 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, 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: FAYE CANYON WELL within the FAYE CANYON CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	29 E	WM	29	NE SW	FAYE CANYON WELL - 1300 FEET SOUTH AND 2680 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 29

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	29 E	WM	29	NW SE	31.7
25 S	29 E	WM	29	SW SE	26.5
Total					58.2

6. Transfer Application T-12803 proposes additional points of appropriation listed in the table below with the approximate distances from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance Measured in feet (ft)
25 S	29 E	WM	29	NE SW	WELL #2 - 1320 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 29	1900 ft.
25 S	29 E	WM	28	SW SW	WELL #3 - 1320 FEET NORTH AND 1320 FEET EAST FROM THE SW CORNER OF SECTION 28	4100 ft.
25 S	29 E	WM	29	NW SE	WELL #6 - 1285 FEET SOUTH AND 1460 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 29	1246 ft.

Transfer Review Criteria (OAR 690-380-4010)

7. 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.
8. 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-12803.

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

Determination and Proposed Action

The additional points of appropriation proposed in Transfer Application T-12803 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-12803 is approved, the final order will include the following:

1. *The additional points of appropriation proposed in Transfer Application T-12803 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 46177 and any related decree.*
3. *Water right Certificate 46177 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the additional points of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point 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. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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 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>