

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12857, Crook County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT 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

WAIBEL PROPERTIES, LLC
BRAD AND JULIE WAIBEL
C/O BOB WILLIAMS
8055 SW POWELL BUTTE HWY
POWELL BUTTE, OR 97753

Agent

H.A. MCCOY ENGINEERING AND SURVEYING
ATTN: HAYES MCCOY
1180 SW LAKE ROAD, #201
REDMOND, OR 97756

Findings of Fact

1. On February 28, 2018, Brad and Julie Waibel, Waibel Properties LLC, filed an application to change the point of appropriation and to change the place of use under Certificate 55660. The Department assigned the application number T-12857.
2. Notice of the application for transfer was published on March 6, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 13, 2018, the agent for the applicant submitted a revised application and map to clarify the authorized point of appropriation and place of use.
4. On June 18, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12857 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of July 18, 2018, for the applicants to respond. On May 9, 2018, the agent for the applicants agreed to the terms and conditions of the draft Preliminary Determination, requested the Department proceed with issuance of the Preliminary Determination and provided the necessary information to demonstrate that the applicants are 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.

5. The right to be transferred is as follows:

Certificate: 55660 in the name of L. S. RANCH OF PSR (perfected under Permit G-10430)
Use: IRRIGATION OF 40.0 ACRES
Priority Date: AUGUST 16, 1984
Rate: 0.5 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, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.
Source: A WELL within the CROOKED RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	21 E	WM	12	SW NW	1350 FEET SOUTH AND 1200 FEET EAST FROM THE NW CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	21 E	WM	12	SW NW	0.1
17 S	21 E	WM	12	SE NW	24.0
17 S	21 E	WM	12	NE SW	15.9
Total					40.0

6. Transfer Application T-12857 proposes to move the authorized point of appropriation southeast approximately 825 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	21 E	WM	12	SE NW	1600 FEET SOUTH AND 2000 FEET EAST FROM THE NW CORNER OF SECTION 12

7. Transfer Application T-12857 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	21 E	WM	12	NE SW	15.8
17 S	21 E	WM	12	NW SW	19.0
17 S	21 E	WM	12	SW SW	3.0
17 S	21 E	WM	12	SE SW	2.2
Total					40.0

Transfer Review Criteria (OAR 690-380-4010)

8. 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.

9. 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-12857.
10. The proposed changes would not result in enlargement of the right.
11. The proposed changes would not result in injury to other water rights.
12. All other application requirements are met.

Determination and Proposed Action

The change in point of appropriation and change in place of use proposed in Transfer Application T-12857 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-12857 is approved, the final order will include the following:

1. *The change in point of appropriation and change in place of use proposed in Transfer Application T-12857 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 55660 and any related decree.*
3. *Water right Certificate 55660 is cancelled.*
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 each new 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.*
5. *The quantity of water diverted at the new point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
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, 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.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this **JUL 23 2018** ,



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>