

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11751, Harney County	)	PROPOSING APPROVAL OF
	)	ADDITIONAL POINTS OF APPROPRIATION

Authority

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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

MIKE PEILA
PO BOX 537
HINES, OR 97738

Findings of Fact

1. On March 5, 2014, MIKE PEILA filed an application for additional points of appropriation under Certificates 36998 and 44694. The Department assigned the application number T-11751.
2. Notice of the application for transfer was published on March 11, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 26, 2015, the Department notified the applicant's agent of the deficiencies in the application. Specifically, a missing tax lot on the Land Use form, missing acreage in Table 2, and incorrect character of use identified for Wells 1 and 2.
4. The Department requested that the deficiencies be resolved by March 23, 2015.
5. On March 12, 2015, the applicant provided sufficient information to the Department to resolve the deficiencies.
6. On March 16, 2018 the Department e-mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-11751 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of April 16, 2018, for the applicant to respond. The agent for the applicant responded that the location of proposed Well 7 was incorrect based on information provided in the application.
7. On March 22, 2018, the Department received updated location information for Well 3 and Well 7.

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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8. On April 23, 2018 the Department e-mailed a copy of a second revised draft Preliminary Determination proposing to approve Transfer Application T-11751 to the applicant and the agent. The second revised draft Preliminary Determination cover letter set forth a deadline of May 23, 2018, for the applicant to respond.
9. On May 20, 2018, the applicant 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.
10. The first right to be transferred is as follows:

Certificate: 36998 in the name of JOHN M. CAMPBELL (perfected under Permit G-1643)

Use: IRRIGATION of 966.2 ACRES and SUPPLEMENTAL IRRIGATION of 433.8 ACRES

Priority Date: JULY 15, 1960

Rate: 7.80 CUBIC FEET PER SECOND (CFS), being 2.23 CFS from WELL No. 1 and 5.57 CFS from WELL No. 2

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: WELL Nos.1 and 2 tributaries of SILVIES RIVER (MALHEUR LAKE)

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	30 E	WM	24	SW NE	WELL 1 - 2450 FEET SOUTH AND 630 FEET WEST FROM THE NE CORNER OF THE NW¼ NE ¼ OF SECTION 24
24 S	30 E	WM	26	SE SE	WELL 2 - 2270 FEET SOUTH AND 6160 FEET WEST FROM THE E¼ CORNER OF SECTION 25

Authorized Place of Use:

PRIMARY IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Well 1 Acres	Well 2 Acres	Wells 1 & 2 Acres
24 S	30 E	WM	24	SW NE		1.4		
24 S	30 E	WM	24	NE SW		0.4		
24 S	30 E	WM	24	NW SE		20.8		
24 S	30 E	WM	24	SW SE		9.3		
24 S	30 E	WM	24	SE SE		34.0		
24 S	30 E	WM	25	NE NE		28.0		
24 S	30 E	WM	25	NW NE		1.4		
24 S	30 E	WM	25	SE NE				36.0
24 S	30 E	WM	25	NE SW			8.0	
24 S	30 E	WM	25	NW SW			4.4	
24 S	30 E	WM	25	SW SW			40.0	
24 S	30 E	WM	25	SE SW			40.0	
24 S	30 E	WM	25	NE SE				2.0
24 S	30 E	WM	25	NE SE			39.1	
24 S	30 E	WM	25	NW SE			23.2	

PRIMARY IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Well 1 Acres
24 S	30 E	WM	25	SW SE		
24 S	30 E	WM	25	SE SE		41.7
24 S	30 E	WM	26	NE SE		41.7
24 S	30 E	WM	26	SE SE		13.3
24 S	30 E	WM	35	NE NE		21.6
24 S	30 E	WM	35	SE NE		32.0
24 S	30 E	WM	36	NE NE		9.2
24 S	30 E	WM	36	NE NE		41.3
24 S	30 E	WM	36	NW NE		41.3
24 S	30 E	WM	36	SE NE		34.6
24 S	30 E	WM	36	NE NW		31.6
24 S	30 E	WM	36	NW NW		40.0
24 S	30 E	WM	36	SW NW		40.0
24 S	30 E	WM	36	SE NW		34.4
24 S	31 E	WM	19	SW SW	4	37.2
24 S	31 E	WM	19	SE SW		38.8
24 S	31 E	WM	30	NE NW		
24 S	31 E	WM	30	NW NW	1	38.6
24 S	31 E	WM	30	SW NW	2	28.8
24 S	31 E	WM	30	SE NW	1	37.2
Total						37.1
Total					171.3	615.2
						179.7

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Well 1 Acres
24 S	30 E	WM	24	NE NE		39.2
24 S	30 E	WM	24	NW NE		39.8
24 S	30 E	WM	24	SW NE		35.0
24 S	30 E	WM	24	SE NE		39.4
24 S	30 E	WM	24	NE NW		35.8
24 S	30 E	WM	24	NW NW		0.2
24 S	30 E	WM	24	SW NW		0.3
24 S	30 E	WM	24	SE NW		17.2
24 S	30 E	WM	24	NE SE		39.5
24 S	30 E	WM	24	NW SE		10.0
24 S	31 E	WM	19	NW NW	1	38.2
24 S	31 E	WM	19	SW NW	2	38.4
24 S	31 E	WM	19	SE NW		23.7
24 S	31 E	WM	19	NE SW		38.7
24 S	31 E	WM	19	NW SW	3	38.4
Total						433.8

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

Certificate: 44694 in the name of JOHN M. CAMPBELL (perfected under Permit G-5073)
Use: IRRIGATION of 215.2 ACRES and SUPPLEMENTAL IRRIGATION of 538.7 ACRES
Priority Date: SEPTEMBER 24, 1970
Rate: 7.13 CFS, being 2.23 CFS from WELL No. 1 and 4.9 CFS from WELL No. 2

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: WELL Nos.1 and 2 a tributaries of SILVIES RIVER

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	30 E	WM	24	SW NE	WELL 1 - 2450 FEET SOUTH AND 630 FEET WEST FROM THE NE CORNER OF THE NW¼ NE ¼ OF SECTION 24
24 S	30 E	WM	26	SE SE	WELL 2 - 2270 FEET SOUTH AND 6160 FEET WEST FROM THE E¼ CORNER OF SECTION 25

Authorized Place of Use:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Wells 1 & 2 Acres
24 S	31 E	WM	29	SW NE	13.4
24 S	31 E	WM	29	SW NW	20.2
24 S	31 E	WM	29	SE NW	20.2
24 S	31 E	WM	30	NE NE	39.7
24 S	31 E	WM	30	NW NE	40.9
24 S	31 E	WM	30	SW NE	39.4
24 S	31 E	WM	30	SE NE	41.4
Total					215.2

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Well 1 Acres	Well 1 & 2 Acres
24 S	31 E	WM	19	NE NE	39.4	
24 S	31 E	WM	19	NW NE	39.5	
24 S	31 E	WM	19	SW NE	40.2	
24 S	31 E	WM	19	SE NE	36.5	
24 S	31 E	WM	19	NE NW	29.3	
24 S	31 E	WM	19	SE NW	15.1	
24 S	31 E	WM	19	NE SE	39.0	
24 S	31 E	WM	19	NW SE	40.6	
24 S	31 E	WM	19	SW SE	40.8	
24 S	31 E	WM	19	SE SE	39.3	
24 S	31 E	WM	29	NW NE		40.0
24 S	31 E	WM	29	SW NE		20.0
24 S	31 E	WM	29	NE NW		40.0
24 S	31 E	WM	29	NW NW		39.0
24 S	31 E	WM	29	SW NW		20.0
24 S	31 E	WM	29	SE NW		20.0
Total					359.7	179.0

7. Transfer Application T-11751 proposes additional points of appropriation, described as follows with the approximate distances from the existing points of appropriation identified:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Well 1	Distance from Well 2
24 S	30 E	WM	36	NE SW	WELL 3 - 2000 FEET NORTH AND 2525 FEET EAST FROM THE SW CORNER OF SECTION 36	2.2 miles	1.0 mile
24 S	31 E	WM	30	SE SE	WELL 4 - 0 FEET NORTH AND 1320 FEET WEST FROM THE SE CORNER OF SECTION 30	1.9 miles	1.9 miles
24 S	30 E	WM	25	NE NE	WELL 5 - 1320 FEET SOUTH AND 660 FEET WEST FROM THE NE CORNER OF SECTION 25	0.8 mile	1.2 miles
24 S	30 E	WM	25	NE SW	WELL 6 - 1955 FEET NORTH AND 2685 FEET WEST FROM THE SE CORNER OF SECTION 25	1.2 miles	0.8 mile
24 S	30 E	WM	36	NE SW	WELL 7 - 2050 FEET NORTH AND 2640 FEET EAST FROM THE SW CORNER OF SECTION 36	2.2 miles	1.0 mile

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 rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
9. A pump, pipeline, and flood irrigation 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-11751.
10. The proposed change would not result in enlargement of the rights.
11. The proposed change would not result in injury to other water rights.
12. All other application requirements are met.

Determination and Proposed Action

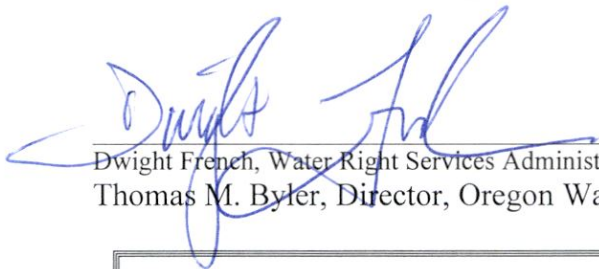
The additional points of appropriation proposed in Transfer Application T-11751 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-11751 is approved, the final order will include the following:

1. *The additional points of appropriation proposed in Transfer Application T-11751 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 36998 and 44694 and any related decree.*
3. *Water Right Certificates 36998 and 44694 are cancelled.*

4. *The quantity of water diverted at the 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 points of appropriation.*
7. *The changes authorized under this order shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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, new certificates confirming the rights 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 Arla Heard. If you have questions about the information in this document, you may reach me at 503-986-0806 or arla.l.heard@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>