

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-12667, Wasco County) PROPOSING APPROVAL OF AN
) ADDITIONAL 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

INDIAN CREEK HOLDINGS, LLC
LOWELL AND MARY FORMAN
PO BOX 219
ANTELOPE, OR 97001

Agent

WATER RIGHT SERVICES, LLC
JOHN A. SHORT
PO BOX 1830
BEND, OR 97709

Findings of Fact

1. On May 15, 2017, Lowell and Mary Forman of Indian Creek Holdings, LLC, filed an application for an additional point of appropriation under Certificates 42564 and 42566 and a change in place of use under Certificates 42564, 42566 and 2401. The Department assigned the application number T-12667.
2. Notice of the application for transfer was published on May 23, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 7, 2018, the agent for the applicant submitted a revised application and map to clarify the points of diversion for Certificate 2401.
4. On April 11, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12667 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of May 9, 2018, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are 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 first right to be transferred is as follows:

Certificate: 42564 in the name of ROBERT HASTINGS (perfected under Permit G-4010)
Use: IRRIGATION OF 33.0 ACRES
Priority Date: FEBRUARY 28, 1968
Rate: 0.41 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, 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 ANTELOPE CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	16 E	WM	22	NW NW	670 FEET NORTH AND 60 FEET EAST FROM THE SW CORNER OF THE NW¼ NW¼ OF SECTION 22

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	16 E	WM	15	SW SW	9.3
8 S	16 E	WM	22	NW NW	23.7
Total					33.0

6. Transfer Application T-12667 proposes an additional point of appropriation southwest approximately 230 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	16 E	WM	21	NE NE	490 FEET NORTH AND 70 FEET WEST FROM THE SW CORNER OF THE NW¼ NW¼ OF SECTION 22

7. Transfer Application T-12667 also proposes to change the place of use of the above described right, diminishing a portion of the right to supplemental irrigation as follows:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	16 E	WM	15	SW SW	8.2
8 S	16 E	WM	22	NW NW	20.0
Total					28.2

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	16 E	WM	21	NE NE	4.3
8 S	16 E	WM	21	NW NE	0.5
Total					4.8

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

Certificate: 42566 in the name of JOHN R. HASTINGS (perfected under Permit G-5081)
Use: IRRIGATION AND SUPPLEMENTAL IRRIGATION OF 30.3 ACRES
Priority Date: JULY 26, 1971
Rate: 0.38 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, 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; provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.
Source: A WELL within the ANTELOPE CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	16 E	WM	22	NW NW	670 FEET NORTH AND 60 FEET EAST FROM THE SW CORNER OF THE NW¼ NW¼ OF SECTION 22

Authorized Place of Use:

PRIMARY AND SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	16 E	WM	21	NE NE	30.3

9. Transfer Application T-12667 proposes an additional point of appropriation approximately 230 feet southwest from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	16 E	WM	21	NE NE	490 FEET NORTH AND 70 FEET WEST FROM THE SW CORNER OF THE NW¼ NW¼ OF SECTION 30

10. Transfer Application T-12667 also proposes to change the place of use of the water right and diminish the primary irrigation portion to supplemental irrigation to the incoming primary water right Certificate 2401 (see Finding No. 11) located on the following lands:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	16 E	WM	21	NE NE	22.5
8 S	16 E	WM	21	NW NE	7.8
Total					30.3

11. The portion of the third right to be transferred is as follows:

Certificate: 2401 in the name of MARGARET HILL (Trout Creek Decree, for Jefferson, Wasco, and Crook Counties, Volume 5, Page 57)
Use: IRRIGATION OF 47.75 ACRES, DOMESTIC AND STOCK USE
Priority Date: 1892
Limit/Duty: The amount of water to which such right is entitled and hereby confirmed for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1.0 acre-foot per acre during any period of 30 days or 3.0 acre feet per acre during any irrigation season, and shall be subject to all other conditions and limitations contained in said decree.
Source: ANTELOPE, INDIAN AND COLD CAMP CREEKS, TRIBUTARIES OF TROUT CREEK

Authorized Place of Use:

IRRIGATION, DOMESTIC & STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	16 E	WM	16	SE SE	1.50
8 S	16 E	WM	21	NE NE	23.25
8 S	16 E	WM	21	NW NE	17.00
8 S	16 E	WM	21	SW NE	2.00
8 S	16 E	WM	22	NW NW	4.00
Total					47.75

12. Transfer Application T-12667 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	16 E	WM	21	NE NE	31.00
8 S	16 E	WM	21	NW NE	14.25
8 S	16 E	WM	21	SW NE	2.50
Total					47.75

Transfer Review Criteria (OAR 690-380-4010)

13. 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.
14. 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-12667.
15. The proposed changes would not result in enlargement of the rights.
16. The proposed changes would not result in injury to other water rights.
17. All other application requirements are met.

Determination and Proposed Action

The additional point of appropriation and change in place of use proposed in Transfer Application T-12667 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-12667 is approved, the final order will include the following:

- 1. The additional point of appropriation and change in place of use proposed in Transfer Application T-12667 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 42564, 42566 and 2401 and any related decree.*
- 3. Water right Certificates 42564, 42566 and 2401 are cancelled. A new certificate will be issued describing that portion of Certificate 2401 not affected by this transfer.*
- 4. The quantity of water diverted at the additional point of appropriation (well), 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 new point of appropriation.*
 - b. The water user shall maintain the meter or measuring devices in good working order.*
 - c. The water user shall allow the Watermaster access to the meter or measuring devices; provided however, where the meter 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 rights.*
- 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, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this SEP 10 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>



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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August 31, 2018

INDIAN CREEK HOLDINGS
LOWELL AND MARY FORMAN
PO BOX 219
ANTELOPE, OR 97001

SUBJECT: Water Right Transfer Application T-12667

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12667. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the Department's notice.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0886 or Patrick.K.Starnes@oregon.gov if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application file T-12667
Jeremy T. Giffen, Watermaster District 11 *(via e-mail)*
John A. Short, Agent for the applicant *(via e-mail)*
Linda Lee Miller, CWRE #47708 *(via e-mail)*

encs