

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12281, Josephine County	)	PROPOSING DENIAL OF A CHANGE
	)	IN SURFACE WATER POINT OF
	)	DIVERSION TO GROUNDWATER
	)	POINT OF APPROPRIATION

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, 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

SARA TRAMP
1720 NE HILLCREST LANE
GRANTS PASS, OR 97526

Findings of Fact

1. On February 26, 2016, STEPHEN SHINER filed an application for a change from a surface water point of diversion to a groundwater point of appropriation under Certificate 13828. The Department assigned the application number T-12281.
2. Notice of the application for transfer was published on March 8, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 23, 2016 the Department approved an assignment of T-12281 to Sara Tramp, 1720 NE Hillcrest Lane, Grants Pass, OR 97526.
4. On August 22, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-12281 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 24, 2018, for the applicant to respond. The applicant did not respond by the deadline.
5. The portion of the right to be transferred is as follows:
Certificate: 13828 in the name of WILLIAM BARR (confirmed by decree of the Circuit Court of the State of Oregon for Josephine County, and the said decree entered of record at Salem, in the Order Record of the STATE ENGINEER, in Volume 13 at Pages 70)
Use: IRRIGATION

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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Priority Date: APRIL 1, 1893

Limit/Duty: The amount of water which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed one cubic foot per second for each 50 acres of land irrigated during the irrigation season from April 1 to November 1 of each year.

Period of Use: April 1 to November 1

Source: UNNAMED CREEK, tributary OF DEER CREEK

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	7 W	WM	34	NW SW	2.0

6. Certificate 13828 does not describe the location of the authorized point of diversion, however the applicants have provided information indicating the original point of diversion was Hathaway Ditch and indicates that the location of the authorized point of diversion is as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
37 S	7 W	WM	34	NW SW	420 FEET SOUTH AND 380 FEET EAST FROM THE W ¼ CORNER OF SECTION 34

7. Transfer Application T-12281 proposes a change from a surface water point of diversion to a groundwater point of appropriation approximately 590 feet from the authorized point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	7 W	WM	34	SW NW	150 FEET NORTH AND 540 FEET EAST FROM THE W ¼ CORNER OF SECTION 34

Transfer Review Criteria [OAR 690-380-4010(2)]

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 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-12281.
10. The proposed well does not meet the requirements of ORS 540.531. On August 17, 2016, the Department determined the proposed point of appropriation will not affect the surface water source "similarly", as outlined by OAR 690-380-2130(2)(c) and (11)(b), and cannot be considered the same source. Stream depletion modeling with the Hunt 2003 analytical model, using a realistic range of hydrologic parameters for the aquifer indicates that pumping the proposed point of appropriation will not affect the surface water source similarly to the current point of diversion on the creek.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

Determination and Proposed Action

The change from a surface water point of diversion to a groundwater point of appropriation proposed in Transfer Application T-12281 appears not to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be denied unless the proposed groundwater point of appropriation is modified to develop the same source of water as is currently authorized, or the applicant wishes to withdraw the transfer application.

Notwithstanding this denial, if the deficiency can be resolved and subsequent review determines Transfer Application T-12281 can be approved, the final order will include the following:

- 1. The change from a surface water point of diversion to a groundwater point of appropriation proposed in Transfer Application T-12281 is 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 13828 and any related decree.*
- 3. Water right Certificate 13828 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 new point of appropriation shall not exceed the quantity of water lawfully available at the original point of diversion.*
- 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 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.*
- 6. The use of water under this right shall be subject to regulation consistent with other water rights from the surface water source and to all other applicable conditions and restrictions that existed at the original point of diversion.*
- 7. If, within five years after approval of the transfer, the Department finds that the transfer results in substantial or undue interference with an existing ground water right due to use of the well, that would not have occurred in the absence of the transfer, the new point of appropriation shall be subordinate to the existing right injured by the transfer.*
- 8. The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion under the transferred portion of the right. However, if within five years after approval of the transfer, the Department receives a transfer application to return to the last authorized surface water point of diversion, the application shall be approved.*

9. *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.*
10. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this OCT 09 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 503-986-0860 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>



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

October 9, 2018

SARA TRAMP
1720 NE HILLCREST LANE
GRANTS PASS, OR 97526

SUBJECT: Water Right Transfer Application T-12281

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to NOT approve T-12281. This document is an intermediate step in the denial process. 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 503-986-0806 or arla.l.heard@oregon.gov if I may be of assistance.

Sincerely,

Arla L Heard
Transfer Specialist
Transfer and Conservation Section

cc: T-12281
Jacob D. Johnstone, District 14 Watermaster (*via e-mail*)

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