

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12669, Josephine County)	PROPOSING APPROVAL OF A
)	CHANGE FROM A SURFACE WATER
)	POINT OF DIVERSION TO A
)	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

ANN JAMES
THOMAS R. VANCE
3567 MIDWAY AVE
GRANTS PASS, OR 97527

Findings of Fact

1. On May 15, 2017, ANN JAMES and THOMAS R. VANCE filed an application to change from a surface water point of diversion to a groundwater point of appropriation under Certificate 10869. The Department assigned the application number T-12669.
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 October 18, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12669 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of November 16, 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 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.

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

Certificate: 10869 in the name of WILLIAM H. ALGER (perfected under Permit S-9595)
Use: IRRIGATION of 3.4 ACRES
Priority Date: APRIL 15, 1930
Rate: 0.04 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 in case of rotation.
Source: MURPHY CREEK, a tributary of APPLGATE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
37 S	6 W	WM	25	NE SE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	6 W	WM	25	NE SE	3.40

5. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 10869 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	6 W	WM	25	NE SE	1020 FEET WEST FROM THE S1/16 CORNER OF SECTION 25

6. Transfer Application T-12669 proposes to change from a surface water point of diversion to a groundwater point of appropriation (well) approximately 444 feet from the existing point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	6 W	WM	25	NE SE	90 FEET NORTH AND 585 FEET WEST FROM THE S1/16 CORNER OF SECTION 25

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

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 portable pump, water tank, 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-12669.
9. The proposed point of appropriation meets the requirements of ORS 540.531 and OAR 690-380-2130(2).
10. The proposed change would not result in enlargement of the right.

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 change from a surface water point of diversion to a groundwater point of appropriation proposed in Transfer Application T-12669 appears to be consistent with the requirements of ORS 540.505 to 540.580, OAR 690-380-2130 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-12669 is 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-12669 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 10869 and any related decree.*
3. *Water right Certificate 10869 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. *The well from which the water is taken under this right shall be constructed so that the use of the well will affect the surface water source similarly to the use of the original authorized point of diversion.*
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. *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 diversion/appropriation.*
 - 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.*
8. *All applicable restrictions that existed at the original point of diversion shall apply to the proposed well.*

9. *The original date of priority shall be retained. However, if within five years after approving the transfer, the Department finds that the transfer results in substantial interference with existing groundwater rights that would not have occurred in the absence of the transfer, the proposed well shall be subordinate to any existing right injured by the transferred water right.*
10. *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.*
11. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this NOV 05 2018,



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or corey.a.courchane@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

November 5, 2018

ANN JAMES
THOMAS R. VANCE
3567 MIDWAY AVE
GRANTS PASS, OR 97527

SUBJECT: Water Right Transfer Application T-12669

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12669. 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 corey.a.courchane@oregon.gov or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-12669
Jacob D. Johnstone, District 14 Watermaster (via e-mail)

encs