



4. Water right Certificates 92719, 92588 and 15553 were all issued for primary irrigation. Pursuant to OAR 690-380-5120, the agent stated the landowner requests to diminish portions of Certificates 15553 (priority date of 1945) and 92719 (priority date of 1907) to supplemental irrigation for 9.06 acres, (footprint of Certificate 15553). On September 4, 2018, the agent for the applicant submitted revised application pages, a new map and two notarized affidavits for the diminution of Certificates 15553 and 92719 from primary irrigation to supplemental irrigation and is further described below in Findings of Fact No. 15 and 16.
5. On September 7, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12787 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 7, 2018, for the applicant to respond. 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.
6. The portion of the right to be transferred is as follows:

**Certificate:** 15553 in the name of J. T. WHARTON (perfected under Permit U-164)  
**Use:** IRRIGATION of 9.06 ACRES  
**Priority Date:** MAY 29, 1945  
**Rate:** 0.34 CUBIC FOOT PER SECOND  
**Limit:** Limited to 0.0375 cfs of one cubic foot per second per acre  
**Source:** A WELL within the WALLA WALLA RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	33	NE SW	None given

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	33	NE SW	9.06*

\*Note: there are a total of three primary water rights appurtenant to these lands and two of them will be diminished to supplemental irrigation. See Findings of Fact No. 15 and 16 below.

7. Certificate 15553 does not describe the exact location of the point of appropriation. However, information from the Certified Water Rights Examiner's map based on a recent field visit and subsequent survey, indicate that the original point of appropriation is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	33	NE SW	WELL 1 - 459 FEET SOUTH AND 386 FEET WEST FROM THE CENTER OF SECTION 33

8. Transfer Application T-12787 proposes an additional point of appropriation southwest approximately 800 feet to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	33	NE SW	WELL 2 - 1946 FEET NORTH AND 1581 FEET EAST FROM THE SW CORNER OF SECTION 33

9. The Department finds, based on the information provided, that the proposed point of appropriation, Well 2 (UMAT 4878) develops the same (source) aquifer as that of the original authorized Well 1 (UMAT 4920) and complies with the Department's administrative rule under OAR 690-380-2110 (2) and OAR 690-380-4010(2)(e). The source aquifer is identified as being within the sedimentary aquifer.

***Transfer Review Criteria (OAR 690-380-4010)***

10. Water has been used within the last five years prior to the submittal of Transfer Application T-12787 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.
11. 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-12787.
12. The proposed change, as conditioned herein, would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.
14. All other application requirements are met.

***Diminution of Certain Water Rights***

15. On September 4, 2018, the deeded landowner submitted an affidavit for the partial diminution of a water right certificate.

The portion of the right proposed to be diminished from primary irrigation to supplemental irrigation is described as follows:

**Certificate:** 15553 in the name of J. T. WHARTON (perfected under Permit U-164)  
**Use:** IRRIGATION of 9.06 ACRES  
**Priority Date:** MAY 29, 1945  
**Rate:** 0.34 CUBIC FOOT PER SECOND  
**Limit:** limited to 0.0375 cfs per acre  
**Source:** A WELL within the WALLA WALLA RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	33	NE SW	none given

**Place of Use to be Diminished to Supplemental Irrigation:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	33	NE SW	9.06

16. Also on September 4, 2018, the landowner submitted an affidavit for the voluntary Diminution of an entire water right certificate.

The entire right proposed to be diminished from primary irrigation to supplemental irrigation is described as follows:

**Certificate:** 92719 in the name of FIRST GROWTH PROPERTIES, LLC (confirmed by decree of the Circuit Court of the State of Oregon for Umatilla County, Vol. 12, Page 9)  
**Use:** IRRIGATION of 5.0 ACRES  
**Priority Date:** 1907  
**Rate:** 0.188 CUBIC FOOT PER SECOND  
**Limit:** ONE AND A HALF MINER’S INCHES PER ACRE (0.0375 cfs per acre)  
**Source:** WASTE WATER, tributary to the WALLA WALLA RIVER

**Place of Use to be Diminished to Supplemental Irrigation:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	33	NE SW	5.0

**Determination and Proposed Action**

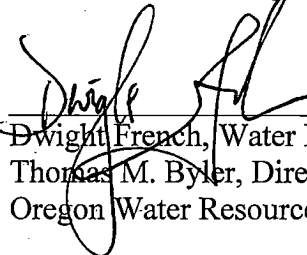
The additional point of appropriation proposed in Transfer Application T-12787 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000, and the diminished rights should be diminished. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the diminished rights will be diminished to supplemental irrigation.

*If Transfer Application T-12787 is approved, the final order will include the following:*

- 1. The additional point of appropriation proposed in Transfer Application T-12787 is approved. The portions of the rights that have been diminished are diminished.*
- 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 15553 and any related decree.*
- 3. A portion of the water right evidenced by water right Certificate 15553 and the entire Certificate 92719 are diminished from primary irrigation to supplemental irrigation as described above in Findings of Fact Nos. 3, 4, 14 and 15.*
- 4. Water right Certificates 15553 and 92719 are cancelled. New certificates shall be issued to confirm those portions of the rights NOT modified by this transfer and the diminishments.*

5. *The quantity of water diverted at the new additional point of appropriation, 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.*
6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
7. *Water use measurement conditions:*
  - a. *Before water use may begin under this order, the water user shall install totalizing flow meters, 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 device(s); provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
8. *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.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this     JAN 14 2019    ,

  
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](mailto: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**

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

January 7, 2019

**VIA E-MAIL**

ROBERTSON FAMILY, LLC  
ATTN: STEPHEN ROBERTSON  
1076 SE GARRISON VILLAGE WAY  
COLLEGE PLACE, WA 99324

SUBJECT: Water Right Transfer Application T-12787

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12787. 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 503-986-0866 or [Patrick.K.Starnes@oregon.gov](mailto: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-12787

Gregory M. Silbernagel, Watermaster District 5 **(via e-mail)**

Bill Neve, Water Right Solutions LLC, Agent for the applicant **(via e-mail)**

Jonathon S. Travis CWRE #91138 **(via e-mail)**

encs