

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12957, Klamath County)	PROPOSING APPROVAL OF
)	ADDITIONAL POINTS OF
)	APPROPRIATION, A CHANGE IN
)	PLACE OF USE, AND CHARACTER
)	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

BLY WATER AND SANITARY DISTRICT
PO BOX 72
BLY, OR 97622

Findings of Fact

1. On June 21, 2018, BLY WATER AND SANITARY DISTRICT filed an application for additional points of appropriation and to change the place of use and character of use under Certificates 82569 and 82851. The Department assigned the application number T-12957.
2. Notice of the application for transfer was published on July 3, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 18, 2018, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of the deficiencies in the application. The Department requested that the deficiencies be resolved by October 17, 2018.
4. On September 26, 2018, the applicant submitted additional fees in order to continue processing the application.
5. On October 2, 2018, the applicant's agent submitted a revised Table 1 and map, correcting the deficiencies.

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.

6. On October 25, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12957 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 26, 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.

7. The first right to be transferred is as follows:

Certificate: 82569 in the name of BLY WATER DISTRICT, AN OREGON MUNICIPAL CORPORATION (perfected under Permit G-9033)

Use: MUNICIPAL USE

Priority Date: JULY 18, 1980

Rate: 1.55 CUBIC FEET PER SECOND

Source: A WELL in the KLAMATH BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	14 E	WM	34	SW SW	110 FEET NORTH AND 2014.5 FEET WEST FROM THE S1/4 CORNER OF SECTION 34

Authorized Place of Use:

MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
36 S	14 E	WM	34	SW NE
36 S	14 E	WM	34	NE NW
36 S	14 E	WM	34	SE NW
36 S	14 E	WM	34	NE SW
36 S	14 E	WM	34	SE SW
36 S	14 E	WM	34	NE SE
36 S	14 E	WM	34	NW SE
36 S	14 E	WM	34	SW SE
36 S	14 E	WM	34	SE SE
36 S	14 E	WM	35	SW SW
37 S	14 E	WM	2	NW NW
37 S	14 E	WM	2	SW NW
37 S	14 E	WM	3	NE NE
37 S	14 E	WM	3	NW NE
37 S	14 E	WM	3	SW NE
37 S	14 E	WM	3	SE NE
37 S	14 E	WM	3	NE NW
37 S	14 E	WM	3	SE NW

8. Transfer Application T-12957 proposes additional points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from the authorized point of appropriation in miles (mi)
36 S	14 E	WM	33	SE SE	POA 3 - 110 FEET NORTH AND 75 FEET WEST FROM THE SE1/4 CORNER OF SECTION 33	0.1 mi
37 S	14 E	WM	3	SE SW	POA 1 - 151.06 FEET NORTH AND 1112.83 FEET WEST FROM THE S1/4 CORNER OF SECTION 3	1.0 mi

9. Transfer Application T-12957 also proposes to change the place of use of the right to:

MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
36 S	14 E	WM	34	SW NE
36 S	14 E	WM	34	NE NW
36 S	14 E	WM	34	SE NW
36 S	14 E	WM	34	NE SW
36 S	14 E	WM	34	SE SW
36 S	14 E	WM	34	NE SE
36 S	14 E	WM	34	NW SE
36 S	14 E	WM	34	SW SE
36 S	14 E	WM	34	SE SE
36 S	14 E	WM	35	SW SW
37 S	14 E	WM	2	NW NW
37 S	14 E	WM	2	SW NW
37 S	14 E	WM	3	NE NE
37 S	14 E	WM	3	NW NE
37 S	14 E	WM	3	SW NE
37 S	14 E	WM	3	SE NE
37 S	14 E	WM	3	NE NW
37 S	14 E	WM	3	SE NW
37 S	14 E	WM	3	NE SW
37 S	14 E	WM	3	SE SW
37 S	14 E	WM	3	NE SE
37 S	14 E	WM	3	NW SE
37 S	14 E	WM	3	SW SE

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

Certificate: 82851 in the name of BLY WATER DISTRICT (perfected under Permit G-6353)
Use: DOMESTIC WATER SUPPLY FOR THE COMMUNITY OF BLEY-WAS HEIGHTS, INCLUDING COMMERCIAL PURPOSES
Priority Date: NOVEMBER 12, 1974
Rate: 1.38 CUBIC FEET PER SECOND
Source: A WELL in the SPRAGUE RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	14 E	WM	3	SE SW	151.06 FEET NORTH AND 1112.83 FEET WEST FROM THE S1/4 CORNER OF SECTION 3

Authorized Place of Use:

DOMESTIC WATER SUPPLY FOR THE COMMUNITY OF BLEY-WAS HEIGHTS, INCLUDING COMMERCIAL PURPOSES					
Twp	Rng	Mer	Sec	Q-Q	
37 S	14 E	WM	3	NE SW	
37 S	14 E	WM	3	SE SW	
37 S	14 E	WM	3	NE SE	
37 S	14 E	WM	3	NW SE	
37 S	14 E	WM	3	SW SE	

- On September 18, 2018, the Department identified a scrivener's error in the described location of the point of appropriation (POA) under Certificate 82851.
- The Department identified information in the original application that better describes the authorized POA as:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
37 S	14 E	WM	3	SE SW	NORTH 82 DEGREES 16 MINUTES 12 SECONDS WEST AND 1123.04 FEET FROM THE S1/4 CORNER OF SECTION 3

- Transfer Application T-12957 proposes additional points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from the authorized point of appropriation in miles (mi)
36 S	14 E	WM	34	SW SW	POA 2 - 110 FEET NORTH AND 2014.5 FEET WEST FROM THE S1/4 CORNER OF SECTION 34	1.0 mi
36 S	14 E	WM	33	SE SE	POA 3 - 110 FEET NORTH AND 75 FEET WEST FROM THE SE1/4 CORNER OF SECTION 33	1.1 mi

- Transfer Application T-12957 proposes to change the character of use to Municipal use.
- Transfer Application T-12957 also proposes to change the place of use of the right to:

MUNICIPAL USE					
Twp	Rng	Mer	Sec	Q-Q	
36 S	14 E	WM	34	SW NE	
36 S	14 E	WM	34	NE NW	
36 S	14 E	WM	34	SE NW	

MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
36 S	14 E	WM	34	NE SW
36 S	14 E	WM	34	SE SW
36 S	14 E	WM	34	NE SE
36 S	14 E	WM	34	NW SE
36 S	14 E	WM	34	SW SE
36 S	14 E	WM	34	SE SE
36 S	14 E	WM	35	SW SW
37 S	14 E	WM	2	NW NW
37 S	14 E	WM	2	SW NW
37 S	14 E	WM	3	NE NE
37 S	14 E	WM	3	NW NE
37 S	14 E	WM	3	SW NE
37 S	14 E	WM	3	SE NE
37 S	14 E	WM	3	NE NW
37 S	14 E	WM	3	SE NW
37 S	14 E	WM	3	NE SW
37 S	14 E	WM	3	SE SW
37 S	14 E	WM	3	NE SE
37 S	14 E	WM	3	NW SE
37 S	14 E	WM	3	SW SE

16. Certificate 82851 does not specify a total quantity of water to be diverted annually for domestic water supply including commercial purposes; however, the limit of the water right is the maximum quantity that could be beneficially used without waste. Therefore, to prevent enlargement of this right, the maximum diverted annual volume of water for municipal use under this right should be limited to 997.3 AF (1.38 cfs x 1.98 AF/day x 365 days).

Transfer Review Criteria (OAR 690-380-4010)

17. 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.
18. A pump, storage tank, booster pumps and a water delivery 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-12957.
19. The proposed changes, as conditioned, would not result in enlargement of the rights.
20. The proposed changes, as conditioned, would not result in injury to other water rights.
21. All other application requirements are met.

Determination and Proposed Action

The additional points of appropriation, change in place of use, and change in character of use proposed in Transfer Application T-12957 appear to be consistent with the requirements of ORS

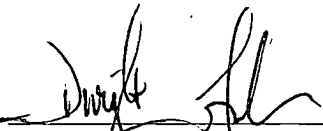
537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12957 is approved, the final order will include the following:

1. *The additional points of appropriation, change in place of use, and change in character of use proposed in Transfer Application T-12957 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 82569 and 82851, and any related decree.*
3. *Water Right Certificates 82569 and 82851 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.*
 - 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 use of water for Certificate 82851 under the proposed municipal use shall be limited to a total quantity of water diverted of 997.3 acre-feet per year.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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 JAN 28 2019,



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

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Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

January 28, 2019

BLY WATER AND SANITARY DISTRICT
PO BOX 72
BLY, OR 97622

SUBJECT: Water Right Transfer Application T-12957

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12957. 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 and in the Klamath Falls Herald and News newspaper, 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 last date of newspaper publication.

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: Transfer Application file T-12957
Danette M. Watson, District 17 Watermaster (via e-mail)
Dan Scalas, CWRE #88332 (via e-mail)

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