

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12926, Klamath County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF
)	APPROPRIATION

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

HORSEFLY IRRIGATION DISTRICT
PO BOX 188
BONANZA, OR 97623

Findings of Fact

1. On May 18, 2018, HORSEFLY IRRIGATION DISTRICT filed an application for an additional point of appropriation under Certificates 42738 and 91296. The Department assigned the application number T-12926.
2. Notice of the application for transfer was published on May 22, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 18, 2019, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12926 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 17, 2019, for the applicant to respond. The applicant requested a five year completion date and 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 first right to be transferred is as follows:

Certificate: 42738 in the name of HORSEFLY IRRIGATION DISTRICT (perfected under Permit G-3670)

Use: IRRIGATION OF 142.5 ACRES AND SUPPLEMENTAL IRRIGATION OF 604.6 ACRES

Priority Date: APRIL 26, 1967

Rate: 9.34 CUBIC FEET 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 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, a tributary of LOST RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	11.5 E	WM	36	NW NW	870 FEET SOUTH AND 310 FEET EAST FROM THE NW CORNER OF SECTION 36

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	11.5 E	WM	26	SW SW	7.0
38 S	11.5 E	WM	26	SE SW	16.7
38 S	11.5 E	WM	26	SW SE	16.4
38 S	11.5 E	WM	26	SE SE	1.5
38 S	11.5 E	WM	27	NE SE	9.6
38 S	11.5 E	WM	27	NW SE	0.2
38 S	11.5 E	WM	27	SW SE	9.6
38 S	11.5 E	WM	27	SE SE	27.8
38 S	11.5 E	WM	35	NE NE	23.3
38 S	11.5 E	WM	35	NW NE	0.1
38 S	11.5 E	WM	35	SE NE	0.3
38 S	11.5 E	WM	35	SE NW	6.8
38 S	11.5 E	WM	36	NW NW	4.8
38 S	11.5 E	WM	36	SW NW	18.4
TOTAL					142.5

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	11.5 E	WM	26	SW SW	25.2
38 S	11.5 E	WM	26	SE SW	23.3
38 S	11.5 E	WM	26	SW SE	7.2
38 S	11.5 E	WM	27	SW SE	6.4
38 S	11.5 E	WM	27	SE SE	12.6

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	11.5 E	WM	34	NE NE	39.6
38 S	11.5 E	WM	34	NW NE	36.8
38 S	11.5 E	WM	34	SW NE	36.8
38 S	11.5 E	WM	34	SE NE	40.0
38 S	11.5 E	WM	34	NE NW	8.4
38 S	11.5 E	WM	34	SW NW	4.0
38 S	11.5 E	WM	34	SE NW	27.2
38 S	11.5 E	WM	34	NW SE	39.6
38 S	11.5 E	WM	35	NE NE	13.8
38 S	11.5 E	WM	35	NW NE	33.2
38 S	11.5 E	WM	35	SW NE	25.8
38 S	11.5 E	WM	35	NE NW	38.4
38 S	11.5 E	WM	35	NW NW	37.0
38 S	11.5 E	WM	35	SW NW	33.2
38 S	11.5 E	WM	35	SE NW	32.0
38 S	11.5 E	WM	35	NE SW	39.2
38 S	11.5 E	WM	35	NW SW	39.6
38 S	11.5 E	WM	35	NW SE	5.3
TOTAL					604.6

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

Certificate: 91296 in the name of HORSEFLY IRRIGATION DISTRICT (perfected under Permit G-8528)

Use: IRRIGATION OF 36.7 ACRES AND SUPPLEMENTAL IRRIGATION OF 184.5 ACRES

Priority Date: FEBRUARY 7, 1979

Rate: 2.77 CUBIC FEET PER SECOND

Limit/Duty: The amount of water used for irrigation, 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 ALKALI LAKE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	11.5 E	WM	36	NW NW	870 FEET SOUTH AND 310 FEET EAST FROM THE NW CORNER OF SECTION 36

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
38 S	11 E	WM	31	NW SW	3	1.3
38 S	11.5 E	WM	36	SW NE		9.4
38 S	11.5 E	WM	36	SE NW		5.0
38 S	11.5 E	WM	36	NE SW		1.1
38 S	11.5 E	WM	36	NE SE		11.6

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
38 S	11.5 E	WM	36	NW SE		7.3
38 S	11.5 E	WM	36	SE SE		1.0
TOTAL						36.7

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
38 S	11 E	WM	31	NW SW	3	36.2
38 S	11 E	WM	31	SW SW	4	12.2
38 S	11.5 E	WM	36	NE NE		12.4
38 S	11.5 E	WM	36	SW NE		15.0
38 S	11.5 E	WM	36	SE NE		33.2
38 S	11.5 E	WM	36	NW NW		10.0
38 S	11.5 E	WM	36	SW NW		1.5
38 S	11.5 E	WM	36	SE NW		9.0
38 S	11.5 E	WM	36	NE SW		4.0
38 S	11.5 E	WM	36	NE SE		28.4
38 S	11.5 E	WM	36	NW SE		15.9
38 S	11.5 E	WM	36	SE SE		6.7
TOTAL						184.5

6. Transfer Application T-12926 proposes an additional point of appropriation approximately 0.8 mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	11.5 E	WM	36	SW SE	POA #2 - 4440 FEET SOUTH AND 2780 FEET EAST FROM THE NW CORNER OF SECTION 36

Transfer Review Criteria (OAR 690-380-4010)

7. 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.
8. 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-12926.
9. The Groundwater Section has found that the existing point of appropriation is reported to be cased to only 30 feet and so would be open to both the upper sediment zone and deeper volcanic-rock aquifer zones but the sedimentary zones are productive as well. Although it is likely that nearly all of the production is supplied by the deeper volcanic-rock aquifer production from the upper sedimentary zone the new well should be continuously cased and sealed into the volcanic-rock or basalt zones which should be encountered at approximately 250 foot depth.
10. The proposed change, as conditioned, would not result in enlargement of the rights.

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 additional point of appropriation proposed in Transfer Application T-12926 appears 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-12926 is approved, the final order will include the following:

1. *The additional point of appropriation proposed in Transfer Application T-12926 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 Certificates 42738 and 91296 and any related decree.*
3. *Water right Certificates 42738 and 91296 are cancelled.*
4. *The quantity of water diverted at the additional point of appropriation (POA #2), together with that diverted at the original point of appropriation (POA #1), 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 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 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 proposed additional point of appropriation shall be cased and sealed to the volcanic-rock or "basalt" zone, approximately 250 feet below ground level.*
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 change 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 FEB 15 2019,



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

This Preliminary Determination was prepared by: Tamera Smith. If you have any questions about the information in this document, you may reach me at 503-986-0898 or tamera.l.smith@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

February 15, 2019

VIA E-MAIL

HORSEFLY IRRIGATION DISTRICT
PO BOX 188
BONANZA, OR 97623

SUBJECT: Water Right Transfer Application T-12926

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12926. 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.

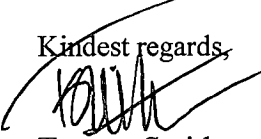
A public notice is being published in the Department's weekly publication and in the Klamath Falls Herald & News, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department 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 503-986-0898 or tamera.l.smith@oregon.gov if I may be of assistance.

Kindest regards,


Tamera Smith
Transfer Specialist
Transfer and Conservation Section

cc: T-12926
Danette M. Watson, District 17 Watermaster (via e-mail)
Steven L. Shropshire, Agent for the applicant (via e-mail)
Daniel B. Scalas, CWRE # 88332 (via e-mail)

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