

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12710, Wasco County)	PROPOSING APPROVAL OF A CHANGE
)	IN POINT OF APPROPRIATION, A
)	CHANGE IN PLACE OF USE, PARTIAL
)	DIMINUTION OF A WATER RIGHT,
)	AND PARTIAL CANCELLATION OF A
)	WATER RIGHT

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

PHILIP PETERSEN
1102 E DEERFIELD
COLBERT, WA 99005

Agent

SHONEE D. LANGFORD
SCHWABE, WILLIAMSON & WYATT
530 CENTER ST. NE, SUITE 400
SALEM, OR 97301

Findings of Fact

1. On July 3, 2017, Philip Petersen filed an application to change the point of appropriation and place of use under Certificate 86059. The Department assigned the application number T-12710.
2. Notice of the application for transfer was published on July 11, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 29, 2018, the agent for the applicant submitted a revised application map and associated application pages which clarified the existing points of appropriation.
4. The Department determined that there are multiple primary water rights existing on the same parcel of land proposed in the transfer. Water right Certificates 55632 and 86059 were both issued for primary irrigation. Pursuant to OAR 690-380-5120 and 690-380-2240(2), the

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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Department notified the applicant of the stacked primaries. On November 7, 2018, the agent for the applicant requested the Department consider Certificate 55632 to be primary and Certificate 86059 to be supplemental on approximately 4.25 acres. The Department shall diminish Certificate 86059 from primary irrigation to supplemental irrigation and is further described below in Finding of Fact No. 16.

5. On December 5, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12710 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 4, 2019, for the applicant to respond. On February 1, 2019, the agent for 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. The agent also requested additional time for completion of the transfer to be extended to October 1, 2022 to guarantee adequate time to complete the project.

6. The right to be transferred is as follows:

Certificate: 86059 in the name of W.J. PETERSEN (perfected under Permit G-11061)
Use: IRRIGATION OF 92.4 ACRES
Priority Date: MARCH 24, 1989
Rate: 1.16 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, is limited to a diversion of 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: THREE WELLS, within the FIFTEENMILE CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	POA Change	Measured Distances
1S	13E	WM	25	NE SE	RETAIN	WELL 2 (WASC 3429) - 330 FEET SOUTH AND 500 FEET WEST FROM THE E¼ CORNER OF SECTION 25
1S	13E	WM	25	NE SE	DROP	WELL 4 (WASC 3421) - 230 FEET SOUTH AND 470 FEET WEST FROM THE E¼ CORNER OF SECTION 25
1S	14E	WM	30	SW NW	RETAIN	WELL 1 (WASC 3425) - 1030 FEET NORTH AND 280 FEET EAST FROM THE W¼ CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION						Acreage per Change		Acre Total for both changes
Twp	Rng	Mer	Sec	Q-Q	Proposed Change	Change in POA	Change in POU	
1S	14E	WM	19	NE SW	POA	36.0	-	36.0
1S	14E	WM	19	NW SW	POA and POU	28.8	8.1	28.8
1S	14E	WM	19	SW SW	POA and POU	20.5*	0.2	20.5*
1S	14E	WM	19	SE SW	POA	7.1	-	7.1
Total						92.4	8.3	92.4

*Note: 4.25 acres (of 20.5 ac) within the SW¼ SW¼ will be diminished from primary irrigation to supplemental irrigation and further described in Finding #16 below.

7. Transfer Application T-12710 proposes to change the place of use of the above described 8.3 acres of irrigation to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1S	14E	WM	19	NE SW	3.5
1S	14E	WM	19	NW SW	4.8
Total					8.3

8. Transfer Application T-12710 also proposes to discontinue use of Well 4, and change the point of appropriation approximately 25 feet north to Well 5 located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1S	13E	WM	25	NE SE	WELL 5 (WASC 51188)- 205 FEET SOUTH AND 462 FEET WEST FROM THE W¼ CORNER OF SECTION 30, T1S, R14E, WM

9. The Department finds, based on the information provided, that the proposed point of appropriation, Well 5 (WASC 51188) develops the same aquifer (source) as that of the original authorized Well 4 (WASC 3421), Well 2 (WASC 3429) and Well 1 (WASC 3425) and complies with the Department’s administrative rule under OAR 690-380-2110 (2) and OAR 690-380-4010(2)(e).

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-12710 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. Wells, pumps, 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-12710.
12. The proposed change 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.

Partial Cancellation of a Water Right

15. The applicant submitted an affidavit meeting the requirements of ORS 540.621 for partial cancellation of a water right. The partial cancellation is for the use of 0.04 cfs from three wells within the Fifteenmile Creek Basin for irrigation of 3.0 acres under a portion of Certificate 86059. The applicant has abandoned any and all interest in this water right for primary irrigation and is described as follows:

Certificate: 86059 in the name of W.J. PETERSEN (perfected under Permit G-11061)
Use: IRRIGATION OF 3.0 ACRES
Priority Date: MARCH 24, 1989
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, is limited to a diversion of 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: THREE WELLS, within the FIFTEENMILE CREEK BASIN

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	14 E	WM	19	NW SW	3.0

Partial Diminution of a Certain Water Right

16. As described above in Finding of Fact No. 4, pursuant to OAR 690-380-5120, it was determined that there were two, layered primary water rights on the same lands. On November 7, 2018, the agent for the applicant stated they want to keep water right Certificate 55632, having the more senior priority date as their primary water right and requested the Department diminish a portion of Certificate 86059 for 4.25 acres of primary irrigation to supplemental irrigation.

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

Certificate: 86059 in the name of W.J. PETERSEN (perfected under Permit G-11061)
Use: IRRIGATION OF 4.25 ACRES
Priority Date: March 24, 1989
Rate: 0.05 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, is limited to a diversion of 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: THREE WELLS, within the FIFTEENMILE CREEK BASIN

Authorized Place of Use to be Diminished to Supplemental Irrigation:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	14 E	WM	19	SW SW	4.25

Determination and Proposed Action


The change in point of appropriation and change in place of use proposed in Transfer Application T-12710 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000, the voluntary diminished portion of the right should be diminished and the abandoned portion of the right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned portion of the right will be cancelled.

If Transfer Application T-12710 is approved, the final order will include the following:

- 1. The change in point of appropriation and change in place of use proposed in Transfer Application T-12710 are approved. The voluntary diminished portion of the right is diminished and the portion of the right that has been abandoned is cancelled.*
- 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 86059 and any related decree.*
- 3. Water right Certificate 86059 is cancelled.*
- 4. The diminution of 4.25 acres under Certificate 86059 from primary irrigation to supplemental irrigation is approved.*
- 5. 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 86059 and any related decree.*
- 6. The quantity of water diverted at the new point 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.*
- 7. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
- 8. The former place of use of the transferred right as conditioned herein shall no longer receive water under the right.*

9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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.*
10. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 4th day of April, 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

Protests should be addressed to the attention of Water Rights 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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April 2, 2019

Applicant

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Agent

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SCHWABE, WILLIAMSON & WYATT
530 CENTER ST. NE; SUITE 400
SALEM, OR 97301

SUBJECT: Water Right Transfer Application T-12710

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12710. 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 503-986-0886 or Patrick.K.Starnes@oregon.gov if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application T-12710
Robert L. Wood, District 3 Watermaster *(via e-mail)*
Larry M. Toll, CWRE #132 *(via e-mail)*

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