

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12947, Jackson County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF DIVERSION

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

BRANDI WAITS
4923 HWY 66
ASHLAND, OR 97520

Findings of Fact

1. On June 11, 2018, Tabula Rasa, LLC filed an application to change the point of diversion under Certificates 54029 and 54030. The Department assigned the application number T-12947.
2. Notice of the application for transfer was published on June 19, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 26, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12947 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 7, 2019, 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.
4. On February 20, 2019, Transfer Application T-12947 was assigned to Brandi Waits, 4923 Hwy 66, Ashland, OR 97520.

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.
--

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

Certificate: 54029 in the name of JERRY W. and CATHERINE A. EVITTS
(confirmed by decree of the Circuit Court)
Use: IRRIGATION of 4.2 ACRES
Priority Date: 1854
Rate: 0.051 CUBIC FOOT PER SECOND
Source: NEIL CREEK, tributary of BEAR CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
39 S	2 E	WM	19	SE SW	42	TAYLOR DITCH - 330 FEET SOUTH AND 65 FEET WEST FROM THE SW CORNER OF DLC 43

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
39 S	2 E	WM	19	NE SW	41	4.2

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

Certificate: 54030 in the name of JERRY W. and CATHERINE A. EVITTS
(Confirmed by decree of the Circuit Court)
Use: IRRIGATION of 0.4 ACRE
Priority Date: 1854
Rate: 0.005 CUBIC FOOT PER SECOND
Source: NEIL CREEK, tributary of BEAR CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
39 S	2 E	WM	19	SE SW	42	TAYLOR DITCH - 330 FEET SOUTH AND 65 FEET WEST FROM THE SW CORNER OF DLC 43

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
39 S	2 E	WM	19	SE SW	41	0.40

7. Transfer Application T-12947 proposes to move the point of diversion of both rights approximately 0.2 mile to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
39 S	2 E	WM	19	NE SW	41	1500 FEET NORTH AND 1890 FEET EAST FROM THE SW CORNER OF SECTION 19

8. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

9. 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 rights are subject to forfeiture under ORS 540.610.
10. 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-12947.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

Determination and Proposed Action

The change in point of diversion proposed in Transfer Application T-12947 appears to be consistent with the requirements of ORS 540.505 to 540.580 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-12947 is approved, the final order will include the following:

1. *The change in point of diversion proposed in Transfer Application T-12947 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 54029 and 54030 and any related decree.*
3. *Water right Certificates 54029 and 54030 are cancelled. A new certificate will be issued describing that portion of Certificate 54029 not affected by this transfer.*
4. *The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.*
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 diversion.*
 - b. *The water user shall maintain the meter or measuring devices 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 is located within a private structure, the Watermaster shall request access upon reasonable notice.*

6. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

7. *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.*
8. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Signed at Salem, Oregon this 8th day of April, 2019.



Lisa J. Jaramillo, Transfer and Conservation Section Manager for
THOMAS M. BYLER, DIRECTOR
Oregon Department of Water Resources

This Preliminary Determination was prepared by: Tamera Smith. If you have any questions about the information in this document, you may reach me at 503-986-0864 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

April 9, 2019

VIA E-MAIL

Applicant

BRANDI WAITS

4923 HWY 66

ASHLAND, OR 97520

SUBJECT: Water Right Transfer Application T-12947

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12947. 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 if I may be of assistance.

Sincerely,

Tamera Smith

Transfer Specialist

Transfer and Conservation Section

cc: T-12947

Shavon L. Haynes, District 13 Watermaster (*via e-mail*)

Steve Bruce, CWRE #439 (*via e-mail*)

encs