

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12795, Crook County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF DIVERSION
)	AND PLACE OF USE

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

PHILIP AND PENELOPE KNIGHT
34645 SW CLOUDREST LN.
HILLSBORO, OR 97123

Findings of Fact

1. On December 18, 2017, Philip and Penelope Knight filed an application to change the point of diversion and to change the place of use under Certificate 87331. The Department assigned the application number T-12795.
2. Philip and Penelope Knight are the receiving landowners who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on December 26, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On September 26, 2018, the Department sent a deficiency letter to the transfer applicant requesting revisions to the transfer application map (consistent with application mapping requirements under OAR 690-380-3100) and to provide a complete description of the existing delivery system. The Department requested that this information be provided by October 25, 2018. On October 9, 2018, the agent (John Short, Water Right Services) for the transfer applicant provided revised application maps and a description of the delivery system sufficient to meet Department application requirements.
5. However, the revised application maps still needed some modification. On October 22, 2018, the Department sent the applicant's agent a request for additional revisions to the transfer application map, specifically the map showing the place of use from which the portion of Certificate 87331 is being transferred and the remaining portion of that certificate

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.

not being transferred. The Department requested that the revised application map be provided to the Department by November 20, 2018.

6. Final revised application maps were received by the Department on November 29, 2018.
7. On December 10, 2018, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Instream Transfer Application T-12795 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of January 18, 2019, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the reports of ownership requested by the Department. However, upon review of the reports of ownership, the Department identified several deficiencies in the reports and additional information necessary to complete review.
8. Revised reports of ownership were received by the department on February 28, 2019. The revised reports were sufficient, along with a notarized affidavit of consent from the landowner (Butler Ranch, LLC), to demonstrate that the applicant is authorized to pursue the transfer.
9. The portion of the right to be transferred is as follows:

Certificate: 87331 in the name of CLAUDE BUTLER (perfected under Permit S-17167)
Use: IRRIGATION AND SUPPLEMENTAL IRRIGATION
Priority Date: JULY 23, 1946
Rate: 0.5 CUBIC FEET PER SECOND (CFS)
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-FORTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: CROOKED RIVER, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	14 E	WM	22	NE NE	NONE GIVEN

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	14 E	WM	15	NE SE	2.20
14 S	14 E	WM	15	NW SE	0.80
14 S	14 E	WM	15	SE SE	16.60
14 S	14 E	WM	22	NW NW	0.40
Total Acres					20.00

10. Certificate 87331 does not describe the measured distances of the point of diversion, however information is available from the applicant's agent and Certified Water Right Examiner (CWRE) indicating that the point of diversion is further described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	14 E	WM	22	NE NE	DIRECT DIVERSION NO. 47A - 1300 FEET SOUTH FROM THE NE CORNER OF SECTION 22

11. Certificate 87331 is a partially deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact No. 9), the total rate and duty for the water right would be exceeded. However, upon review of the water right record, Certificate 87331 (previously Certificate 22454) was to provide a full 1/40th CFS per acre for primary irrigation of lands in Section 15. In addition, water use for proposed irrigation in Section 22 was originally intended to be supplemental to Certificate 2734 (priority date of 1911). Certificate 2734 allows the equivalent diversion of 1/80th CFS per acre. Water use under Certificate 87331 could be used to bring the rate of water that may be applied to supplemental acreage in Section 22 up to the full 1/40th CFS per acre with the equivalent of an additional 1/80th CFS per acre.

Based upon the current water right record and Final Proof map for Certificate 22454 (preceding certificate to 87331), there are 103.5 acres of primary irrigation and 101.9 acres of supplemental irrigation under Certificate 87331. Certificate 87331 allows the diversion of up to 3.89 CFS for irrigation and supplemental irrigation but does not specify how much water may be used for each type of irrigation.

It appears that up to 2.59 CFS may be used for primary irrigation (a full 1/40th CFS per acre for irrigation of 103.5 acres) and up to 1.3 CFS for supplemental irrigation (a full additional 1/80th CFS per acre for supplemental irrigation of 101.9 acres).

All acreage proposed for transfer from Certificate 87331 is for primary irrigation. The quantity available for transfer is as described in the table below. This rate and duty are also the quantities by which Certificate 87331 shall be reduced if this transfer is approved.

Rate	Duty
0.5 CFS	80.0 AF

12. Transfer Application T-12795 proposes to move the authorized point of diversion approximately 14.7 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	13 E	WM	34	SE SW	1180 FEET NORTH AND 2220 FEET EAST FROM THE SOUTHWEST CORNER OF SECTION 34

13. Transfer Application T-12795 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	13 E	WM	34	NE SW	5.7
13 S	13 E	WM	34	SE SW	5.3
13 S	13 E	WM	34	NW SE	2.0
13 S	13 E	WM	34	SW SE	7.0
Total Acres					20.0

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

- 14. The portion of Certificate 87331 proposed for transfer to instream use has been leased to instream use within the five years prior to Transfer Application T-12795 being submitted to the Department. Instream Lease IL-1204 was approved by the Department on June 28, 2012, as evidenced by Special Order Volume 87, Page 885. This lease terminated on November 30, 2016. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
- 15. A 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-12795.
- 16. The proposed changes would not result in enlargement of the rights.
- 17. The proposed changes would not result in injury to other water rights.
- 18. All other application requirements are met.
- 19. 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.
- 20. The portion of Certificate 87331 proposed for transfer is currently temporarily transferred to the proposed place of use under Temporary Transfer Application T-12834. This temporary transfer was approved by the Department on April 25, 2018, as evidenced by Special Order Volume 107, Page 1180, and is set to expire at the end of the irrigation season in 2022. Before Permanent Transfer Application T-12795 may be approved, Temporary Transfer T-12834 must be terminated. The timing of the termination of the temporary transfer may be coordinated with the approval of Transfer Application T-12795.

Determination and Proposed Action

The change in point of diversion and change in place of use proposed in Transfer Application T-12795 appear 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-12795 is approved, the final order will include the following:

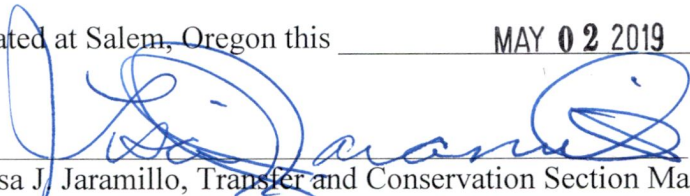
1. *The change in point of diversion and change in place of use proposed in Transfer Application T-12795 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 87331 and any related decree.*
3. *Water right Certificate 87331 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the new together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point 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 the new point of diversion.*
 - 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 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. *The former place of use of the transferred right shall no longer receive water under the right.*
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, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this MAY 02 2019 .


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Thomas M. Byler, Director
Oregon Water Resources Department

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>

This Preliminary Determination was prepared by Laura Wilke. If you have questions about the information in this document, you may reach me at 503-986-0884 or Laura.K.Wilke@oregon.gov.



Oregon
Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

May 3, 2019

Applicant

PHILIP AND PENELOPE KNIGHT
34645 SW CLOUDREST LN.
HILLSBORO, OR 97123

SUBJECT: Water Right Transfer Application T-12795

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12795. 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 Bend Bulletin 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 503-986-0888 or Laura.K.Wilke@oregon.gov if I may be of assistance.

Sincerely,

Laura Wilke

Transfer Specialist

Transfer and Conservation Section

cc: Transfer Application file T-12795
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)
John A. Short, Agent for the applicant (*via e-mail*)
Butler Ranch LLC
Linda Lee Miller, CWRE #47708 (*via e-mail*)

encs