

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12927, Jackson County	)	PROPOSING APPROVAL OF
	)	CHANGES 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**

JTE PROPERTIES, LLC  
3013 GALLS CREEK ROAD  
GOLD HILL, OR 97525

**Agent**

WATER RIGHT SOLUTIONS LLC  
HOLLIE CANNON  
3246 HAMMER ST  
KLAMATH FALLS, OR 97603

**Findings of Fact**

1. On May 21, 2018, JTE PROPERTIES, LLC, filed an application to change the point of diversion (POD) and place of use (POU) under Certificate 3707. The Department assigned the application number T-12927.
2. Notice of the application for transfer was published on June 5, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 4, 2019, the Department issued a draft Preliminary Determination proposing to approve Transfer Application T-12927. The draft Preliminary Determination cover letter set forth a deadline of May 3, 2019, for the applicant to respond. On May 21, 2019, the applicant agreed to the terms and conditions of the draft Preliminary Determination, requested the Department proceed with issuance of the Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.12927

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 portion of the water right to be transferred is as follows:

**Certificate:** 3707 in the name of GOLD CREST FRUIT CO. (Perfected under Permit S-2996)

**Use:** IRRIGATION of 31.0 ACRES

**Priority Date:** JUNE 16, 1916

**Rate:** 0.40 CUBIC FOOT PER SECOND (CFS)

**Source:** GALLS CREEK, tributary to the ROGUE RIVER

**Authorized Place of Use:**

IRRIGATION						Acreage per Change	
Twp	Rng	Mer	Sec	Q-Q	Proposed Change	Change in POD	Change in POU
36 S	3 W	WM	33	SE NW	POD and POU	12.00	12.00
36 S	3 W	WM	33	NE SW	POD and POU	10.00	10.00
36 S	3 W	WM	33	NW SE	POD only	4.00	-
36 S	3 W	WM	33	SW SE	POD and POU	5.00	0.84
Total						31.00	22.84

5. Certificate 3707 does not describe the location of the point of diversion for this water use. However, information is available from the current Certified Water Rights Examiner's map, based on a recent field visit and subsequent survey indicating that the original diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured distance
37 S	3 W	WM	4	SE NE	S32°35'10"E - 2639.27 FEET FROM THE N¼ CORNER OF SECTION 4

6. Transfer Application T-12927 proposes to change the point of diversion for the above described right for both Pheil and Gold Crest ditches downstream approximately 2600 feet to POD #2 located:

Twp	Rng	Mer	Sec	Q-Q	Measured distance
36 S	3 W	WM	33	SW SE	N81°21'52"E - 142.96 FEET FROM THE S¼ CORNER OF SECTION 33

7. Transfer Application T-12927 also proposes to change the place of use of the above described lands to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	3 W	WM	33	SW NE	0.59
36 S	3 W	WM	33	NE SW	2.81
36 S	3 W	WM	33	SE SW	1.70
36 S	3 W	WM	33	NW SE	2.80
36 S	3 W	WM	33	SW SE	14.94
Total					22.84

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 five-year period prior to submittal of the transfer application 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.
10. A diversion structure and ditches 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-12927.
11. The proposed changes would not result in enlargement of the right.
12. The proposed changes would not result in injury to other water rights.
13. All other application requirements are met.

***Re-description of Lands***

14. Water Right Certificate 3707 describes the authorized place of use as 12.0 acres in the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , 10.0 acres in the NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 4.0 acres in the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , and 5.0 acres in the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , in Section 33, Township 36 South, Range 3 East, W.M., Jackson County.
  - a) The application/Permit “proof” map in the water right’s file clearly shows the 31.0 acres consistent with the layout along Galls Creek and the section’s 1/16<sup>th</sup> lines. However, Certificate 3707 describes the location of the 5.0 acres as being within the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ . A parcel within the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  would not be contiguous with the rest of the right. Comparison with historical aerial photos supports the “proof” map, today’s footprint, layout per each quarter quarter and PLSS grid, but does not appear to include this certain 5.0 acres as being within the SE $\frac{1}{4}$  of SE $\frac{1}{4}$ .
  - b) The transfer application map prepared by a Certified Water Right’s Examiner (CWRE) depicts the place of use and footprint under Certificate 3707 as being 12.0 acres in the SE $\frac{1}{4}$  NW $\frac{1}{4}$ , 10.0 acres in the NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 4.0 acres in the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , and 5.0 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$ , in Section 33, Township 36 South, Range 3 East, W.M., Jackson County. The appurtenant water right has always been located west of the County highway and along Galls Creek, and is in agreement with the adjacent water right Certificate 16212.
  - c) Based on the Jackson County Tax Assessor’s map, recent field inspection and subsequent survey by the CWRE, the Department is led to conclude that the 5.0 acres to which the right has always been appurtenant should be re-described as: 5.0 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 33.

15. The following table lists the place of use as described in existing Certificate 3707 and a proposed re-description based on the findings above. The re-described lands total 31.0 acres.

CERTIFICATE 3707											
Original Description of Place of Use						Proposed Re-Description of Place of Use					
Twp	Rng	Mer	Sec	Q-Q	Acres	Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	3 W	WM	33	SE NW	12.0	36 S	3 W	WM	33	SE NW	12.0
36 S	3 W	WM	33	NE SW	10.0	36 S	3 W	WM	33	NE SW	10.0
36 S	3 W	WM	33	NW SE	4.0	36 S	3 W	WM	33	NW SE	4.0
36 S	3 W	WM	33	SE SE	5.0	36 S	3 W	WM	33	SW SE	5.0
Total					31.0	Total					31.0

### ***Determination and Proposed Action***

The changes in point of diversion and place of use proposed in Transfer Application T-12927 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the re-described portion of the water right should be re-described to clarify Certificate 3707. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-12927 is approved, the final order will include the following:*

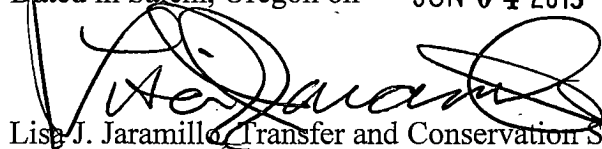
1. *The changes in point of diversion and place of use proposed in Transfer Application T-12927 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 3707 and any related decree.*
3. *Water right Certificate 3707 is cancelled.*
4. *The quantity of water diverted at the new 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 devices are 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, 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 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 in Salem, Oregon on **JUN 04 2019**



Lisa J. Jaramillo, Transfer and Conservation Section Manager, 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](mailto:Ken.D.Dowden@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 servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.



# Oregon

Kate Brown, Governor

## Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

June 3, 2019

**VIA E-MAIL**

### Applicant

JTE PROPERTIES, LLC  
3013 GALLS CREEK ROAD  
GOLD HILL, OR 97525

### Agent

WATER RIGHT SOLUTIONS LLC  
HOLLIE CANNON  
3246 HAMMER ST  
KLAMATH FALLS, OR 97603

SUBJECT: Water Right Transfer Application T-12927

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12927. 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 Medford Mail Tribune 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 503-986-0886 or [Patrick.K.Starnes@oregon.gov](mailto:Patrick.K.Starnes@oregon.gov) if I may be of assistance.

Sincerely,

Kelly Starnes  
Transfer Program Analyst  
Transfer and Conservation Section

cc: Transfer Application file T-12927  
Shavon L. Hayes, District 13 Watermaster **(via e-mail)**  
Hollie Cannon, Agent for the applicant **(via e-mail)**

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