



**Oregon**  
Kate Brown, Governor

**Water Resources Department**  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
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September 10, 2019

5-J LIMITED PARTNERSHIP  
DONALD JOHNSON  
PO BOX 66  
RIDDLE, OR 97469

SUBJECT: Water Right Transfer Application T-12199

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to NOT approve T-12199. This document is an intermediate step in the denial process. 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 503-986-0806 or [arla.l.heard@oregon.gov](mailto:arla.l.heard@oregon.gov) if I may be of assistance.

Sincerely,

Arla L Davis  
Transfer Specialist  
Transfer and Conservation Section

cc: Transfer Application file T-12199  
Greg Wacker, District Watermaster (*via e-mail*)  
Randy Miller, Agent for the applicant (*via e-mail*)

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4. Transfer Application T-12199 proposes to change the character of use to Recreation and Industrial.
5. The Department has determined that it does not have statutory authority to transfer storage rights, which includes changes in the place of use, location of storage, point of diversion or type/character of use.
6. On June 26, 2019 the Department emailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-12199 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 26, 2019, for the applicant to respond. The applicant did not respond by the deadline.

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

7. 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 right is subject to forfeiture under ORS 540.610.
8. The proposed changes would not result in enlargement of the right.
9. The proposed changes would not result in injury to other water rights.
10. All other application requirements are met.

**Determination and Proposed Action**

The change in place of use and change in character of use proposed in Transfer Application T-12199 appear to not 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 denied.

*If Transfer Application T-12199 is approved, the final order will include the following:*

1. *The change in place of use and change in character of use proposed in Transfer Application T-12199 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 51764 and any related decree.*
3. *Water right Certificate 51764 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *Reservoir water use measurement:*
  - a. *Before water use may begin under this order, the water user shall install staff gages, or, with prior approval of the Director, other suitable measuring devices, that measure the entire range and stage between empty and full in each reservoir. Staff gages shall be United States Geological Survey style.*
  - b. *Before water use may begin under this order, if the reservoir is located in channel, weirs or other suitable measuring devices must be installed upstream and downstream*

*of the reservoir, and, an adjustable outlet valve must be installed. The water user shall maintain such devices in good working order. A written waiver may be obtained, if in the judgment of the Director, the installation of weirs or other suitable measuring devices, or the adjustable outlet valve, will provide no public benefit.*

5. *The former place of use of the transferred right shall no longer receive water under the right.*
6. *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.*
7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on SEP 10 2019



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

This Preliminary Determination was prepared by Arla L Davis. If you have question about the information in this document, you may reach me at 503-986-0806 or [arla.l.davis@oregon.gov](mailto:arla.l.davis@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.