

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-12779, Wasco County) PROPOSING APPROVAL OF
) ADDITIONAL POINTS 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

HAL LINDELL
80661 FRIEND RD
DUFUR, OR 97021

Agent

JOSH THOMPSON
WASCO COUNTY SWCD
2325 RIVER RD.
THE DALLES, OR 97058

Findings of Fact

1. On November 29, 2017, Hal Lindell filed an application for additional points of diversion under Certificates 30908, 51359, 51360 and 65816. The Department assigned the application number T-12779.
2. Notice of the application for transfer was published on December 5, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 15, 2019, the Department issued a draft Preliminary Determination proposing to approve Transfer Application T-12779. The draft Preliminary Determination cover letter set forth a deadline of February 15, 2019, for the applicant to respond. On January 17, 2019, the agent for 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.
4. On March 14, 2019, the Certified Water Right Examiner for the applicant provided additional information as to the existence of a portion of the place of use under existing Certificate 30908 under US Hwy 197, and, a small portion of land under Certificate 65816 not owned by the applicant. The Watermaster also provided information as to the ownership and the highway right of way through the property.

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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5. On August 14, 2019, the agent for the applicant submitted a revised place of use Table 2 to reflect changes to the new revised associated map for the clarification of the existing, authorized lands under Certificates 30908 and 65816.
6. On August 19, 2019, the Department issued a revised draft Preliminary Determination proposing to approve Transfer Application T-12779. The revised draft Preliminary Determination cover letter set forth a deadline of September 18, 2019, for the applicant to respond. On August 28, 2019, the agent for the applicant agreed to the terms and conditions of the revised draft Preliminary Determination, requested the Department proceed with issuance of the Preliminary Determination.

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

Certificate: 30908 in the name of F.P. MAYS (confirmed by Decree of Circuit Court of the State of Oregon for Wasco County, Volume 7, Page 196, White River decree)

Use: IRRIGATION OF 441.74 ACRES

Priority Date: 1865 for Tract #1 and 1877 for Tract #2

Limit/Duty: 3.0 acre-feet per acre during any irrigation season (with the further limitations contained in Paragraph 24 of said decree)

Source: TYGH CREEK, a tributary of WHITE RIVER

Authorized Place of Use:

IRRIGATION					
Tract #1 from Mays Ditch					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	13 E	WM	3	SW NE	16.6
4 S	13 E	WM	3	SW NW	26.0
4 S	13 E	WM	3	SE NW	32.9
4 S	13 E	WM	3	NE SW	33.6
4 S	13 E	WM	3	NW SW	20.0
4 S	13 E	WM	3	NW SE	10.0
4 S	13 E	WM	4	SW NE	19.3
4 S	13 E	WM	4	SE NE	24.8
4 S	13 E	WM	4	SE NW	0.3
4 S	13 E	WM	4	NE SW	2.9
4 S	13 E	WM	4	NE SE	26.3
4 S	13 E	WM	4	NW SE	12.74
Total					225.44

IRRIGATION					
Tract #1 from Bonney or Harth Ditch					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	13 E	WM	2	NW SW	7.1
4 S	13 E	WM	2	SW SW	40.0
4 S	13 E	WM	3	NE SE	20.0
4 S	13 E	WM	3	NW SE	8.1
4 S	13 E	WM	3	SW SE	31.7
4 S	13 E	WM	3	SE SE	39.7
4 S	13 E	WM	10	NE NE	18.4
4 S	13 E	WM	10	NW NE	7.6

IRRIGATION					
Tract #1 from Bonney or Harth Ditch					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	13 E	WM	11	NW NW	23.7
Total					196.3

IRRIGATION					
Tract #2 from Bonney or Harth Ditch					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	13 E	WM	2	NW SW	7.0
4 S	13 E	WM	3	NE SE	1.0
4 S	13 E	WM	3	NW SE	12.0
Total					20.0

8. Certificate 30908 does not describe the points of diversion locations that serve these lands on Tygh Creek. However, the Department's 1918 adjudication map identifies diversion dam structures and ditches within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 4, and in NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 3, both within T4S, R13E, WM. In addition, 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 points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Diversion
4 S	13 E	WM	4	SW NW	(MAYS DITCH) - 1410 FEET SOUTH AND 30 FEET EAST FROM THE NW CORNER OF SECTION 4
4 S	13 E	WM	3	NW SW	(MAY DITCH No. 1 – aka Bonney Diversion) - 1900 FEET NORTH AND 760 FEET EAST FROM THE SW CORNER 7 OF SECTION 3

9. Transfer Application T-12779 proposes additional points of diversion for the above described right downstream 8,200 feet to Lindell #1 (upper); and a $\frac{1}{4}$ mile downstream from the Bonney diversion to the Lindell #2 (lower) diversions located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	13 E	WM	4	SE SE	LINDELL #1 - 1250 FEET NORTH AND 400 FEET WEST FROM THE SE CORNER OF SECTION 4
4 S	13 E	WM	3	SE SW	LINDELL #2 - 1115 FEET NORTH AND 1725 FEET EAST FROM THE SW CORNER OF SECTION 3

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

Certificate: 51360 in the name of W J. CODY (confirmed by Decree of Circuit Court of the State of Oregon for Wasco County, Volume 7, Page 196, White River decree)

Use: IRRIGATION OF 24.21 ACRES

Priority Date: 1865

Limit/Duty: 3.0 acre-feet per acre during any irrigation season (with the further limitations contained in Paragraph 24 of said decree), if available at the original point of diversion; SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 3, Township 4 South, Range 13 East, WM; 340 Feet North and 320 feet West from the S $\frac{1}{4}$ Corner, Section 3.

Source: TYGH CREEK, tributary to the WHITE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	13 E	WM	4	SW NW	1,480 FEET SOUTH AND 60 FEET EAST FROM THE NW CORNER OF SECTION 4

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	13 E	WM	4	NE SE	2.80
4 S	13 E	WM	4	NW SE	21.41
Total					24.21

11. Certificate 51360 describes the point of diversion location as being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, 1480 feet south and 60 feet east from the NW Corner, Section 4, T4S, R13E, WM. Information is available from the current Certified Water Rights Examiner's map based on a recent field visit and subsequent survey indicating that this point of diversion is further northwest and is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Diversion
4 S	13 E	WM	4	SW NW	(MAYS DITCH) - 1410 FEET SOUTH AND 30 FEET EAST FROM THE NW CORNER OF SECTION 4

12. Transfer Application T-12779 proposes additional points of diversion for the above described right downstream on Tygh Creek approximately 8,200 feet to Lindell #1; and another 3400 feet downstream to the Lindell #2 diversion located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	13 E	WM	4	SE SE	LINDELL #1 - 1250 FEET NORTH AND 400 FEET WEST FROM THE SE CORNER OF SECTION 4
4 S	13 E	WM	3	SE SW	LINDELL #2 - 1115 FEET NORTH AND 1725 FEET EAST FROM THE SW CORNER OF SECTION 3

13. The third right to be transferred is as follows:

Certificate: 51359 in the name of W.J. CODY (perfected under Permit S-4368)
Use: IRRIGATION OF 10.77 ACRES
Priority Date: January 2, 1920
Rate: 0.14 cubic foot per second (cfs), if available at the original point of diversion; NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 3, Township 4 South, Range 13 East, WM, Mays Ditch 1 - 1320 feet South and 10 feet East from the W $\frac{1}{4}$ Corner, Section 3, or its equivalent in case of rotation, measured at the point of diversion from the stream.
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-EIGHTIETH of one cubic foot per second per acre
Source: TYGH CREEK, tributary to the White River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	13 E	WM	4	SW NW	1480 FEET SOUTH AND 60 FEET EAST FROM THE NW CORNER OF SECTION 4

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	13 E	WM	4	NW SE	2.67
4 S	13 E	WM	4	SW SE	8.10
Total					10.77

14. Certificate 51359 describes the point of diversion location as being within the SW $\frac{1}{4}$ NW $\frac{1}{4}$, 1480 feet south and 60 feet east from the NW Corner, Section 4, T4S, R13E, W.M.. Information is available from the current Certified Water Rights Examiner’s map based on a recent field visit and subsequent survey indicating that this point of diversion is further northwest and is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Diversion
4 S	13 E	WM	4	SWNW	(MAYS DITCH) - 1410 FEET SOUTH AND 30 FEET EAST FROM THE NW CORNER OF SECTION 4

15. Transfer Application T-12779 proposes additional points of diversion for the above described right downstream on Tygh Creek approximately 8,200 feet to Lindell #1; and another 3400 feet downstream to the Lindell #2 located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	13 E	WM	4	SE SE	LINDELL #1 - 1250 FEET NORTH AND 400 FEET WEST FROM THE SE CORNER OF SECTION 4
4 S	13 E	WM	3	SE SW	LINDELL #2 - 1115 FEET NORTH AND 1725 FEET EAST FROM THE SW CORNER OF SECTION 3

16. The fourth right to be transferred is as follows:

Certificate: 65816 in the name of ROBERT LINDELL (perfected under Permit S-44565)
Use: IRRIGATION OF 12.4 ACRES
Priority Date: MAY 29, 1979
Rate: 0.32 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-FORTIETH 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: TYGH CREEK, tributary of the WHITE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	13 E	WM	4	SW NW	1410 FEET SOUTH AND 30 FEET EAST FROM THE NW CORNER OF SECTION 4

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	13 E	WM	4	SW NE	7.4
4 S	13 E	WM	4	SE NE	5.0
Total					12.4

17. Transfer Application T-12779 proposes additional points of diversion for the above described right downstream on Tygh Creek approximately 8,200 feet to Lindell #1; and another 3400 feet downstream to the Lindell #2 diversions located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	13 E	WM	4	SE SE	LINDELL #1 - 1250 FEET NORTH AND 400 FEET WEST FROM THE SE CORNER OF SECTION 4
4 S	13 E	WM	3	SE SW	LINDELL #2 - 1115 FEET NORTH AND 1725 FEET EAST FROM THE SW CORNER OF SECTION 3

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

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

19. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the rights. There is no information in the records that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
20. Diversion structures and ditches 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-12779.
21. The proposed changes would not result in enlargement of the rights.
22. The proposed changes would not result in injury to other water rights.
23. All other application requirements are met.

Determination and Proposed Action

The additional points of diversion proposed in Transfer Application T-12779 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-12779 is approved, the final order will include the following:

- The changes in additional points of diversion proposed in Transfer Application T-12779 are approved.*

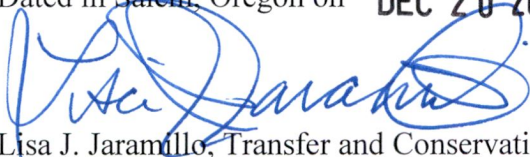
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 30908, 51359, 51360 and 65816 and any related decree.*
3. *Water right Certificates 30908, 51359, 51360 and 65816 are cancelled. A new certificate will be issued describing that portion of the right described by Certificate 30908 not affected by this transfer.*
4. *The quantity of water diverted at the new points of diversion, together with that diverted at the original points 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 the points of diversion (new and existing).*
 - b. *The water user shall maintain the meter(s) or measuring device(s) in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter(s) or measuring device(s); provided however, where the meter(s) or measuring device(s) is/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 points of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screens meet 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 points 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 screens are functioning properly.

7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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.*

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

Dated in Salem, Oregon on **DEC 20 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.

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

December 16, 2019

VIA E-MAIL

Applicant

HAL LINDELL
80661 FRIEND ROAD
DUFUR OR 97021

Agent

JOSH THOMPSON
WASCO COUNTY SWCD
2325 RIVER ROAD
THE DALLES OR 97058
josh.thompson@usda.gov

SUBJECT: Water Right Transfer Application T-12779

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12779. 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 file T-12779
Robert L. Wood, District 3 Watermaster *(via e-mail)*
Larry Toll, CWRE for the applicant *(via e-mail)*

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