

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12848, Grant County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF DIVERSION
)	AND A CHANGE IN 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

GRANT AND BONNIE WINEGAR
65109 INDIAN CREEK ROAD
JOHN DAY, OR 97845

Findings of Fact

1. On February 12, 2018, GRANT AND BONNIE WINEGAR filed an application for an additional point of diversion and to change the place of use under Certificates 82407 and 82408. The Department assigned the application number T-12848.
2. Notice of the application for transfer was published on February 20, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 1, 2018, the Certified Water Right Examiner for the applicant submitted an amended transfer application map.
4. On August 2, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12848 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of September 4, 2018, for the applicant to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

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: 82407 in the name of J. A. AND SUSAN HEASTON (perfected under Permit S-45105)
Use: IRRIGATION OF 13.8 ACRES
Priority Date: JUNE 27, 1980
Rate: 0.34 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) and 4.0 acre-feet for each acre irrigated during the irrigation season of each year.
Source: INDIAN CREEK, tributary to the JOHN DAY RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	33 E	WM	29	SE SE	POD 1 - 10 FEET NORTH AND 750 FEET WEST FROM THE SE CORNER OF SECTION 29
13 S	33 E	WM	29	SE SE	POD 2 - 10 FEET NORTH AND 540 FEET WEST FROM THE SE CORNER OF SECTION 29

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	33 E	WM	29	NW SE	3.1
13 S	33 E	WM	29	SW SE	10.7
Total					13.8

6. Transfer Application T-12848 proposes an additional point of diversion approximately 1450 feet from POD 1 and 1580 feet from POD 2 downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	33 E	WM	29	SW SE	POD 3 - 1080 FEET NORTH AND 1650 FEET WEST FROM THE SE CORNER OF SECTION 29

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

Certificate: 82408 in the name of J. A. AND SUSAN HEASTON (confirmed by John Day River (F) Decree)
Use: IRRIGATION OF 33.6 ACRES
Priority Date: 1881
Rate: 0.84 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) per acre irrigated to June 1st and ONE-EIGHTIETH of one cubic foot per second per acre thereafter; further limited to 1.0 acre-foot per calendar month to June 1st and 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: INDIAN CREEK, tributary to the JOHN DAY RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	33 E	WM	29	SE SE	POD 2 - 10 FEET NORTH AND 540 FEET WEST FROM THE SE CORNER OF SECTION 29

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
13 S	33 E	WM	29	NW SE	26.4	APOD
13 S	33 E	WM	29	NW SE	0.8	APOD / POU
13 S	33 E	WM	29	SW SE	4.8	APOD
13 S	33 E	WM	29	SE SE	1.6	APOD / POU
Total					33.6	

8. Transfer Application T-12848 proposes an additional point of diversion approximately 1580 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	33 E	WM	29	SW SE	POD 3 - 1080 FEET NORTH AND 1650 FEET WEST FROM THE SE CORNER OF SECTION 29

9. Transfer Application T-12848 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
13 S	33 E	WM	29	NW SE	26.4	APOD
13 S	33 E	WM	29	NW SE	2.4	APOD / POU
13 S	33 E	WM	29	SW SE	4.8	APOD
Total					33.6	

10. 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)]

11. 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.
12. A diversion structure and ditch 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-12848.
13. The proposed changes would not result in enlargement of the rights.
14. The proposed changes would not result in injury to other water rights.
15. All other application requirements are met.

Determination and Proposed Action

The additional point of diversion and change in place of use proposed in Transfer Application T-12848 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-12848 is approved, the final order will include the following:

1. *The additional point of diversion and change in place of use proposed in Transfer Application T-12848 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 82407 and 82408 and any related decree.*
3. *Water right Certificates 82407 and 82408 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.*
4. *The quantity of water diverted at the additional point 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 point of diversion (new and existing).*
 - b. *The water user shall maintain the meters or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters 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 a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.*

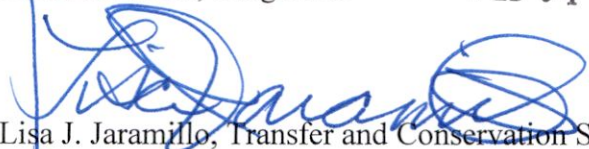
7. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen 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.

8. *The former place of use of the transferred rights shall no longer receive water under the rights.*
9. *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.*
10. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on

FEB 04 2020


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

This Preliminary Determination was prepared by Kelly Starnes. If you have questions about the information in this document, you may reach me at 503-986-0886 or Patrick.k.starnes@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

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February 3, 2020

Applicant

GRANT AND BONNIE WINEGAR
65109 INDIAN CREEK ROAD
JOHN DAY, OR 97845

SUBJECT: Water Right Transfer Application T-12848

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12848. 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 Blue Mountain Eagle 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 if I may be of assistance.

Sincerely

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application file T-12848
Eric W. Julsrud, District 4 Watermaster *(via e-mail)*

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