

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12832, Josephine County)	PROPOSING APPROVAL FOR
)	ADDITIONAL POINTS OF
)	DIVERSION, A CHANGE IN POINTS
)	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

GREGG AND WILMA HYDE
501 PANTHER GULCH ROAD
WILLIAMS, OR 97544

Findings of Fact

1. On January 29, 2018, GREGG AND WILMA HYDE filed an application to change the point of diversion and to change the place of use under Certificate 5357, and to change the points of diversion under Certificates 8861 and 85690. The Department assigned the application number T-12832.
2. Notice of the application for transfer was published on February 6, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 29, 2019 the Department contacted the applicant by written correspondence to notify the applicant of the deficiencies in the application. The applicant is requesting to diminish 7.4 acres to supplemental irrigation under Certificate 5357, and the application did not include an Affidavit for the Voluntary Partial Diminution of a Water Right Certificate. The location of acres in the "FROM" lands under Certificate 5357 was incorrectly identified in Table 2. The Department requested that the deficiencies be resolved by September 27, 2019.
4. On September 12, 2019, the applicant's agent submitted a revised Table 2.

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 September 23, 2019, the Department received an Affidavit for the Voluntary Partial Diminution of a Water Right Certificate from Gregg and Wilma Hyde, resolving the deficiencies.
6. On October 18, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-12832 to the applicants. The application proposed to change the point of diversion under Certificate 5357, which would appropriate water from the wrong source, and to change the place of use under Certificate 5357, which would have created enlargement of the right. The draft Preliminary Determination cover letter set forth a deadline of November 19, 2019, for the applicants to respond.
7. On November 15, 2019, the Department granted additional time to resolve the denial of T-12832 to December 20, 2019.
8. On December 20, 2019, the applicants' agent submitted a revised application and map, removing Certificate 5357 from the application and requesting additional points of diversion and a change in point of diversion under Certificate 8861, and additional points of diversion, a change in point of diversion, and a change in place of use under Certificate 85690, resolving the deficiencies. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
9. The first right to be transferred is as follows:

Certificate: 8861 in the name of EUGENE FRANKLIN MORRISON (perfected under Permit S-4583)
Use: IRRIGATION of 14.0 ACRES
Priority Date: APRIL 24, 1920
Rate: 0.18 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, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent in case of rotation.
Source: EAST FORK WILLIAMS CREEK, tributary of WILLIAMS CREEK, a tributary of APPLGATE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
39 S	5 W	WM	14	SE NW

Authorized Place of Use:

IRRIGATION						Proposed POD Acres	
Twp	Rng	Mer	Sec	Q-Q	Acres	POD 1	APOD
39 S	5 W	WM	11	SE NW	6.0	6.0	
39 S	5 W	WM	11	NE SW	8.0		8.0
Total					14.0		

10. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 8861 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	5 W	WM	14	SE NW	DAM - 320 FEET NORTH AND 1930 FEET EAST FROM THE W1/4 CORNER OF SECTION 14

11. Transfer Application T-12832 proposes to move the authorized point of diversion approximately 1.1 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	5 W	WM	11	NW SW	POD 1 - 20 FEET SOUTH AND 840 FEET EAST OF THE W1/4 CORNER OF SECTION 11

12. Transfer Application T-12832 also proposes an additional point of diversion approximately 1.1 miles downstream as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	5 W	WM	11	NW SW	APOD - 190 FEET SOUTH AND 970 FEET EAST OF THE W1/4 CORNER OF SECTION 11

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

Certificate: 85690 in the name of IRA F. SPARLIN, M. M. MORRISON, D. S. RIGEL, IRVEN RIGEL and NOAH RIGEL (perfected under Permit S-2600)

Use: IRRIGATION of 35.0 ACRES

Priority Date: AUGUST 3, 1915

Rate: 0.44 CUBIC FOOT PER SECOND

Source: EAST FORK WILLIAMS CREEK, tributary of ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
39 S	5 W	WM	14	SE NW

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Proposed changes
39 S	5 W	WM	11	NW NW	8.0	POD 1
39 S	5 W	WM	11	SW NW	17.0	POD 1
39 S	5 W	WM	11	NW SW	8.0	APOD
39 S	5 W	WM	11	NW SW	2.0	SPANISH POD/POU
Total					35.0	

14. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 85690 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	5 W	WM	14	SE NW	DAM - 320 FEET NORTH AND 1930 FEET EAST FROM THE W1/4 CORNER OF SECTION 14

15. Transfer Application T-12832 proposes to move the authorized point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original point of diversion in miles (mi.)
39 S	5 W	WM	11	NW SW	POD 1 - 20 FEET SOUTH AND 840 FEET EAST OF THE W1/4 CORNER OF SECTION 11	1.1 mi.
39 S	5 W	WM	11	NW SW	SPANISH - 490 FEET SOUTH AND 920 FEET EAST OF THE W1/4 CORNER OF SECTION 11	1.0 mi.

16. Transfer Application T-12832 also proposes an additional point of diversion approximately 1.1 miles downstream as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	5 W	WM	11	NW SW	APOD - 190 FEET SOUTH AND 970 FEET EAST OF THE W1/4 CORNER OF SECTION 11

17. Transfer Application T-12832 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	5 W	WM	11	NW NW	2.0

18. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

19. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
20. 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-12832.
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.

Partial Diminution of a Water Right

24. On December 20, 2019, the Department received an Affidavit for the Voluntary Partial Diminution of a Water Right Certificate from Gregg and Wilma Hyde. The portion of the water right to be diminished is as follows:

Certificate: 5357 in the name of B. C. BOSTWICK (perfected under Permit S-3974)
Use: IRRIGATION of 13.2 ACRES
Priority Date: SEPTEMBER 10, 1918
Rate: 0.18 CUBIC FOOT PER SECOND
Source: FIDDLERS GULCH, a tributary of APPLGATE RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
<i>Not specified in certificate</i>					

Authorized Place of Use to be Diminished:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	5 W	WM	11	SW NW	13.2

25. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 5357 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	5 W	WM	11	SE NW	FIDDLER - 760 FEET NORTH AND 1890 FEET EAST FROM THE W1/4 CORNER OF SECTION 11

Determination and Proposed Action

The additional points of diversion, change in points of diversion, and change in place of use proposed in Transfer Application T-12832 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.

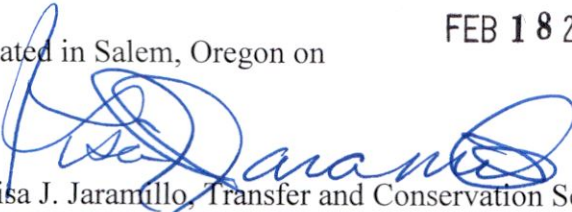
If Transfer Application T-12832 is approved, the final order will include the following:

1. *The change in points of diversion and change in place of use proposed in Transfer Application T-12832 is 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 8861 and 85690, and any related decree.*
3. *Water right Certificate 8861 is cancelled.*
4. *Water right Certificate 85690 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*

5. *The water right for irrigation of 13.2 acres as described by Certificate 5357 is diminished from a right for primary irrigation to a right for supplemental irrigation.*
6. *The quantity of water, described by the water right authorized under Certificate 8861, diverted at the new additional points of diversion (POD 1 and APOD), together with that diverted at the original point of diversion (DAM), shall not exceed the quantity of water lawfully available at the original point of diversion (DAM).*
7. *The quantity of water, described by the water right authorized under Certificate 85690, diverted at the new additional points of diversion (POD 1, APOD, and Spanish), together with that diverted at the original point of diversion (DAM), shall not exceed the quantity of water lawfully available at the original point of diversion (DAM).*
8. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a weir, Parshall Flume, a staff plate, 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.*
9. *Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*
10. *The former place of use of Certificate 85690 shall no longer receive water under the right.*
11. *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.*

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

Dated in Salem, Oregon on FEB 18 2020


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

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or corey.a.courchane@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 18, 2020

GREGG AND WILMA HYDE
501 PANTHER GULCH ROAD
WILLIAMS, OR 97544

SUBJECT: Water Right Transfer Application T-12832

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12832. 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 Grants Pass Daily Courier 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 corey.a.courchane@oregon.gov or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-12832
Scott C. Ceciliani, District 14 Watermaster (*via e-mail*)
Gary Wicks, Agent for the applicant (*via e-mail*)

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