

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12652, Harney County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF
)	APPROPRIATION AND A CHANGE IN
)	PLACE OF USE

Authority

Oregon Revised Statutes (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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

JIM ROBEY
PO BOX 914
HINES, OR 97738

Findings of Fact

1. On April 21, 2017, JIM ROBEY filed an application to change the point of appropriation and place of use under Certificate 92228. The Department assigned the application number T-12652.
2. Notice of the application for transfer was published on May 2, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 13, 2018, the applicant's agent sent in an amended Table 1 and map.
4. On August 14, 2019, the Department sent a letter of deficiency to the applicant and agent, citing a revision deadline of September 16, 2019.
5. On September 5, 2019 the agent sent revisions for Table 1 and Table 2. The Department requested further revision on the same day.
6. On September 6, 2019, the agent sent revisions for Tables 1 and 2 that met the qualifications of the application.

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.

7. On September 9, 2019, the agent sent a revised and certified ON map, which met the qualifications of the application.
8. On November 26, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12652 to the applicant and agent. The draft Preliminary Determination cover letter set forth a deadline of December 26, 2019, for the applicant to respond. The agent requested that the Department proceed with issuance of a Preliminary Determination, and to extend the date of completion five years, and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
9. On December 17, 2019, the Department discovered a scrivener's error in the transferred rate of Well 5 listed for Certificate 92228. Below is the correct rate for Well 5 at 1.5 CFS.
10. On January 21, 2020, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-12653 to the applicant and agent. The revised draft Preliminary Determination cover letter set forth a deadline of February 23, 2020, for the applicant to respond. The applicant's agent responded on January 23, 2020, approving the revised draft Preliminary Determination.
11. The portion of the right to be transferred is as follows:

Certificate: 92228 in the name of BIG HILL, LLC (perfected under Permit G-16498)

Use: IRRIGATION of 210.0 ACRES

Priority Date: JUNE 17, 2008

Rate: 2.63 CUBIC FEET PER SECOND, FURTHER LIMITED TO 2.0 CFS FROM WELL 1 (HARN 1117), 0.9 CFS FROM WELL 3 (HARN 1118), 0.7 CFS FROM WELL 4 (HARN 1116), 1.5 CFS FROM WELL 5 (HARN 1128), AND 0.56 CFS FROM WELL 6

Limit/Duty: The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

Source: WELL 1 (HARN 1117), WELL 3 (HARN 1118), WELL 4 (HARN 1116), WELL 5 (HARN 1128), and WELL 6 in MALHEUR LAKE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	31 E	WM	9	NE NE	WELL 1 (HARN 1117) - 4050 FEET NORTH AND 340 FEET WEST FROM THE SE CORNER OF SECTION 9
25 S	31 E	WM	9	NE SE	WELL 3 (HARN 1118) - 1370 FEET NORTH AND 1270 FEET WEST FROM THE SE CORNER OF SECTION 9
25 S	31 E	WM	10	NW SW	WELL 4 (HARN 1116) - 1400 FEET NORTH AND 620 FEET EAST FROM THE SW CORNER OF SECTION 10
25 S	31 E	WM	10	SE SW	WELL 6 (HARN 51573) - 110 FEET NORTH AND 1380 FEET EAST FROM THE SW CORNER OF SECTION 10
25 S	31 E	WM	16	NW NE	WELL 5 (HARN 1128) - 1300 FEET SOUTH AND 2050 FEET WEST FROM THE NE CORNER OF SECTION 16

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	31 E	WM	10	NE SW	40.0
25 S	31 E	WM	10	SE SW	40.0
25 S	31 E	WM	10	NW SE	40.0
25 S	31 E	WM	10	SW SE	40.0
25 S	31 E	WM	16	SW NE	14.0
25 S	31 E	WM	16	SE NW	36.0
TOTAL					210.0

12. Transfer Application T-12652 proposes to change the points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from authorized well (OFF WELL 5) in miles (mi.)
27 S	31 E	WM	6	NE SW	ON WELL 4 - 1950 FEET NORTH AND 2290 FEET EAST FROM THE NW CORNER OF SECTION 7	12.1 mi.
27 S	31 E	WM	6	NE SW	ON WELL 5 - 1540 FEET NORTH AND 1280 FEET EAST FROM THE NW CORNER OF SECTION 7	11.6 mi.

13. Transfer Application T-12652 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	31 E	WM	6	NE SW	8.0
27 S	31 E	WM	6	SE SW	37.4
27 S	31 E	WM	6	NE SE	31.4
27 S	31 E	WM	6	NW SE	32.0
27 S	31 E	WM	6	SW SE	34.8
27 S	31 E	WM	6	SE SE	31.1
27 S	31 E	WM	7	NW NE	13.4
27 S	31 E	WM	7	NE NW	21.9
TOTAL					210.0

Transfer Review Criteria (OAR 690-380-4010)

14. 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.
15. A pump, pipeline, and sprinkler system 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-12652.
16. The proposed change would not result in enlargement of the right.
17. The proposed change would not result in injury to other water rights.
18. All other application requirements are met.

Determination and Proposed Action

The change in point of appropriation and change in place of use proposed in Transfer Application T-12652 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12652 is approved, the final order will include the following:

1. *The change in point of appropriation and change in place of use proposed in Transfer Application T-12652 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 92228 and any related decree.*
3. *Water right Certificate 92228 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the new points of appropriation (On Well 4 and On Well 5) shall not exceed the quantity of water lawfully available at the original points of appropriation (Well 1 [Harn 1117], Well 3 [Harn 1118], Well 4 [Harn 1116], Well 5 [Harn 1128], and Well 6 [Harn 51573]).*
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 appropriation.*
 - 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. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
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, 2025**. 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.*

FEB 06 2020

Dated in Salem, Oregon on _____



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

This Preliminary Determination was prepared by: Tamera Smith. If you have any questions about the information in this document, you may reach me at 503-986-0864 or tamera.l.smith@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 service members have a right to stay these proceedings under the federal Service members 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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Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

February 10, 2020

JIM ROBEY
PO BOX 914
HINES, OR 97738

SUBJECT: Water Right Transfer Application T-12652

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12652. 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@wr.d.state.or.us if I may be of assistance.

Kindest regards,

Tamera Smith
Transfer Caseworker
Transfer and Conservation Section

cc: T-12652 file
J R. Johnson, District 10 Watermaster (*via e-mail*)
John A. Short, Agent for the applicant (*via e-mail*)

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