

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13355, Klamath County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF
)	APPROPRIATION AND 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

RODNEY R. AND MARIE M. LYON
20302 PAYGR RD
MALIN, OR 97632

Findings of Fact

1. On January 27, 2020, RODNEY R. AND MARIE M. LYON filed an application for an additional point of appropriation and to change the place of use under Certificates 67582 and 91653. The Department assigned the application number T-13355.
2. Notice of the application for transfer was published on February 4, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 30, 2020, the Department contacted the applicant and agent requesting an Affidavit of Voluntary Diminution, along with a corresponding map and application table revisions. On April 3, 2020, the agent complied.
4. On June 2, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13355 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of July 2, 2020, for the applicants to respond. 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.

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. The first right to be transferred is as follows:

Certificate: 67582 in the name of ROD AND MARIE LYON (perfected under Permit G-10650)
Use: IRRIGATION of 278.5 ACRES
Priority Date: OCTOBER 7, 1986
Rate: 3.48 CUBIC FEET 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 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 (or its equivalent) and 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL in the KLAMATH BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	12 E	WM	35	SE SW	WELL #2 (KLAM 11008) - 750 FEET NORTH AND 2550 FEET EAST FROM THE SW CORNER OF SECTION 35

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
40 S	12 E	WM	34	NE SE		37.1
40 S	12 E	WM	35	NE SW		12.4
40 S	12 E	WM	35	NW SW		36.8
40 S	12 E	WM	35	SE SW		35.9
40 S	12 E	WM	35	SW SE		7.6
40 S	12 E	WM	35	SE SE		0.1
41 S	12 E	WM	2	NE NE	4	8.8
41 S	12 E	WM	2	NW NE	3	40.0
41 S	12 E	WM	2	SW NE		22.0
41 S	12 E	WM	2	SE NE		0.2
41 S	12 E	WM	2	NE NW	2	40.0
41 S	12 E	WM	2	SE NW		36.4
41 S	12 E	WM	2	NE SW		1.2
TOTAL						278.5

6. Transfer Application T-13355 proposes an additional point of appropriation approximately 0.5 mile (mi.) from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	12 E	WM	35	NW SW	WELL #1 (KLAM 50168) - 1420 FEET NORTH AND 100 FEET EAST FROM THE SW CORNER OF SECTION 35

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	12 E	WM	2	NW NW	38.2
41 S	12 E	WM	2	SW NW	36.7
TOTAL					74.9

10. Transfer Application T-13355 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	12 E	WM	2	NW NW	33.2
41 S	12 E	WM	2	SW NW	23.8
41 S	12 E	WM	3	NE NE	17.9
TOTAL					74.9

11. Transfer Application T-13355 proposes to transfer a water right within the boundaries of Shasta View Irrigation District. On January 24, 2020, the applicant certified that the District was notified about the proposed water right transfer application in person.

Transfer Review Criteria (OAR 690-380-4010)

12. 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.
13. A pump, pipeline, and sprinkler system 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-13355.
14. The proposed changes would not result in enlargement of the rights.
15. The proposed changes would not result in injury to other water rights.
16. All other application requirements are met.

Partial Diminution of a Certain Water Right

17. On April 8, 2020, the applicant’s agent sent a Voluntary Partial Diminution of a Water Right to the Department. The agent intends to diminish 2.1 acres of Certificate 67582 to supplemental irrigation, as the land is served by a primary water right held by Shasta View Irrigation District, Claim KA-1000.
18. The right proposed to be diminished from primary to supplemental irrigation is described as follows:

Certificate: 67582 in the name of ROD and MARIE LYON (perfected under Permit G-10650)

Use: IRRIGATION of 2.1 ACRES

7. Transfer Application T-13355 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
40 S	12 E	WM	34	NE SE		38.7
40 S	12 E	WM	35	NE SW		12.4
40 S	12 E	WM	35	NW SW		38.2
40 S	12 E	WM	35	SE SW		35.9
40 S	12 E	WM	35	SW SE		7.5
41 S	12 E	WM	2	NE NE	4	5.2
41 S	12 E	WM	2	NW NE	3	39.9
41 S	12 E	WM	2	SW NE		22.0
41 S	12 E	WM	2	SE NE		0.2
41 S	12 E	WM	2	NE NW	2	40.0
41 S	12 E	WM	2	SE NW		36.4
41 S	12 E	WM	3	NE NE		2.1
TOTAL						278.5

8. Transfer Application T-13355 also proposes to diminish 2.1 acres to supplemental irrigation as follows:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	12 E	WM	3	NE NE	2.1

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

Certificate: 91653 in the name of RODNEY LYON AND MARIE LYON AND DRISCOLL STRAWBERRY ASSOCIATES INC. C/O HOLLY BURGESS (perfected under Permit G-15406)

Use: SUPPLEMENTAL IRRIGATION of 74.9 ACRES

Priority Date: MAY 24, 2001

Rate: 0.55 CUBIC FOOT PER SECOND (CFS), BEING 0.55 CFS FROM WELL #1 AND 0.43 CFS FROM WELL #2, in any combination, or its equivalent in case of rotation, measured at the well.

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 (or its equivalent) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

Period of Use: MARCH 1 THROUGH OCTOBER 31

Source: WELL #1 AND WELL #2 IN LOST RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	12 E	WM	35	NW SW	WELL #1 - 1420 FEET NORTH AND 100 FEET EAST FROM THE SW CORNER OF SECTION 35
40 S	12 E	WM	35	SE SW	WELL #2 - SOUTH 73 DEGREES 45 MINUTES 30 SECONDS WEST, 2638 FEET TO THE SW CORNER OF SECTION 35

Priority Date: OCTOBER 7, 1986

Rate: 0.03 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 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 (or its equivalent) and 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL in the KLAMATH BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	12 E	WM	35	NW SW	WELL #1 (KLAM 50168) 1420 FEET NORTH AND 100 FEET EAST FROM THE SW CORNER OF SECTION 35
40 S	12 E	WM	35	SE SW	WELL #2 (KLAM 11008) - 750 FEET NORTH AND 2550 FEET EAST FROM SW CORNER, SECTION 35

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	12 E	WM	3	NE NE	2.1

Determination and Proposed Action

The additional point of appropriation and change in place of use proposed in Transfer Application T-13355 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-13355 is approved, the final order will include the following:

- 1. The additional point of appropriation and change in place of use proposed in Transfer Application T-13355 are approved. Certificate 67582 is diminished.*
- 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 91653 and 91653 and any related decree.*
- 3. Water right Certificates 67852 and 91653 are cancelled. A new certificate will be issued describing those portions of the Certificate 91653 not affected by this transfer.*
- 4. The quantity of water for Certificate 67852, diverted at the additional point of appropriation, (Well #1), combined with the original point of appropriation, (Well #2), shall not exceed the quantity of water lawfully available at the original point of appropriation, (Well #2).*

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 (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. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
7. *The former places of use of the transferred rights 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, 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.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

JUL 15 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.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

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

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

JULY 15, 2020

RODNEY R. AND MARIE M. LYON
20302 PAYGR RD
MALIN, OR 97632

SUBJECT: Water Right Transfer Application T-13355

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13355. 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 Herald and News 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.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Please do not hesitate to contact me at tamera.l.smith@oregon.gov or via phone at 503-986-0864, if I may be of assistance.

Kindest regards,

Transfer Caseworker
Transfer and Conservation Section

cc: Regular Transfer file T-13355
Danette M. Watson, District 17 Watermaster (*via e-mail*)
Hollie Cannon, Agent for the applicant (*via e-mail*)

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