



Oregon

Kate Brown, Governor

Water Resources Department

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September 14, 2021

Applicant

ROGER L. SHELEY

MINDY S. SHELEY

71111 RUHL RD

BURNS, OR 97720

SUBJECT: Water Right Transfer Application T-13257

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13257. 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 Burns Times-Herald 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 contact me at scott.a.grew@oregon.gov or 503-986-0890 if I may be of assistance.

Sincerely,

Scott Grew

Transfer Specialist

cc: Transfer application file T-13257
J R. Johnson, District 10 Watermaster (via e-mail)
John A. Short, Agent for the applicant (via e-mail)

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13257, Harney County	)	PROPOSING APPROVAL FOR
	)	ADDITIONAL POINTS OF
	)	APPROPRIATION, CHANGES IN
	)	POINTS OF APPROPRIATION AND
	)	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.

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Findings of Fact

1. On September 23, 2019, ROGER L. SHELEY and MINDY S. SHELEY filed an application for additional points of appropriation and to change the place of use under Certificates 48659 and 48660, and for additional points of appropriation, to change the points of appropriation, and to change the place of use under Certificate 92120. The Department assigned the application number T-13257.
2. Notice of the application for transfer was published on October 1, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 7, 2021, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13257 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 7, 2021, for the applicants to respond. The applicant 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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4. The first right to be transferred is as follows:

Certificate: 48659 in the name of JOSEPH H. RAINE (perfected under Permit G-5700)

Use: IRRIGATION of 60.0 ACRES

Priority Date: JULY 6, 1973

Rate: 0.67 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 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: RAINE WELL a tributary of RATTLESNAKE CREEK

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	32 E	WM	11	NW NW	WELL 4 - 880 FEET SOUTH AND 70 FEET EAST FROM THE NW CORNER OF SECTION 11

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	11	NW NW	21.2
23 S	32 E	WM	11	SW NW	38.8
				Total	60.0

5. Transfer Application T-13257 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Authorized Well in Miles (mi.)
23 S	32 E	WM	2	NE SW	WELL 2 - 1325 FEET NORTH AND 1325 FEET EAST OF THE SW CORNER OF SECTION 2	0.5 mi.
23 S	32 E	WM	2	SW SW	WELL 1 - 60 FEET NORTH AND 1315 FEET EAST OF THE SW CORNER OF SECTION 2	0.3 mi.
23 S	32 E	WM	11	SW SW	WELL 5 - 1650 FEET SOUTH AND 110 FEET EAST OF THE W 1/4 CORNER OF SECTION 11	0.7 mi

6. Transfer Application T-13257 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	11	NW NW	15.2
23 S	32 E	WM	11	SW NW	31.5
23 S	32 E	WM	11	SE NW	13.3
				Total	60.0

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

Certificate: 48660 in the name of JOSEPH H RAINE (perfected under Permit G-6979)

Use: IRRIGATION of 16.4 ACRES

Priority Date: SEPTEMBER 1, 1976

Rate: 0.21 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 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: RAINE WELL a tributary of RATTLESNAKE CREEK

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	32 E	WM	11	NW NW	WELL 4 - 880 FEET SOUTH AND 70 FEET EAST FROM THE NW CORNER OF SECTION 11

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	11	NW NW	16.4

8. Transfer Application T-13257 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Authorized Well in Miles (mi.)
23 S	32 E	WM	2	NE SW	WELL 2 - 1325 FEET NORTH AND 1325 FEET EAST OF THE SW CORNER OF SECTION 2	0.5 mi.
23 S	32 E	WM	2	SW SW	WELL 1 - 60 FEET NORTH AND 1315 FEET EAST OF THE SW CORNER OF SECTION 2	0.3 mi.
23 S	32 E	WM	11	SW SW	WELL 5 - 1650 FEET SOUTH AND 110 FEET EAST OF THE W 1/4 CORNER OF SECTION 11	0.7 mi

9. Transfer Application T-13257 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	11	NW NW	16.4

10. The portion of the third right to be transferred is as follows:

Certificate: 92120 in the name of ANDY ROOT, ROGER SHELEY, MINDY SHELEY, AND NORTHWEST FARM CREDIT SERVICES FLCA (perfected under Permit G-12676)

Use: IRRIGATION OF 49.7 ACRES FROM WELL 2 AND 3
Priority Date: SEPTEMBER 9, 1994
Rate: 0.62 CUBIC FEET PER SECOND (CFS), BEING 0.62 CFS FOR IRRIGATION FROM WELLS 2 AND 3, LIMITED TO 0.37 CFS FROM WELL 2 AND 0.42 CFS FROM WELL 3
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 for IRRIGATION
Source: TWO WELLS in SOLDIER CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	32 E	WM	2	SE NW	WELL 3 - 3950 FEET NORTH AND 1325 FEET EAST FROM SW THE CORNER OF SECTION 2
23 S	32 E	WM	2	NE SW	WELL 2 - 1325 FEET NORTH AND 1325 FEET EAST FROM THE SW CORNER OF SECTION 2

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	2	NE SW	10.6
23 S	32 E	WM	2	NW SW	13.9
23 S	32 E	WM	2	SW SW	14.5
23 S	32 E	WM	2	SE SW	10.7
				Total	49.7

11. Transfer Application T-13257 proposes a change from the existing points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Authorized Well in Miles (mi.)	
23 S	32 E	WM	2	SW SW	WELL 1 - 60 FEET NORTH AND 1315 FEET EAST OF THE SW CORNER OF SECTION 2	Well 3	Well 2
						0.8 mi.	0.2 mi.

12. Transfer Application T-13257 proposes additional points of appropriation from the existing points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Authorized Well in Miles (mi.)	
23 S	32 E	WM	11	NW NW	WELL 4 - 880 FEET SOUTH AND 70 FEET EAST FROM THE NW CORNER OF SECTION 11	Well 3	Well 2
						1.0 mi.	0.5 mi.

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Authorized Well in Miles (mi.)	
23 S	32 E	WM	11	SW SW	WELL 5 - 1650 FEET SOUTH AND 110 FEET EAST OF THE W 1/4 CORNER OF SECTION 11	1.6 mi.	1.1 mi.

13. Transfer Application T-13257 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	11	NE NW	31.5
23 S	32 E	WM	11	SE NW	18.2
				Total	49.7

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 rights. There is no information in the record that would demonstrate that the rights are 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 rights were present within the five-year period prior to submittal of Transfer Application T-13257.
16. The proposed changes would not result in enlargement of the rights.
17. The proposed changes would not result in injury to other water rights.
18. All other application requirements are met.

Determination and Proposed Action

The additional points of appropriation, change in points of application and change in places of use proposed in Transfer Application T-13257 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-13257 is approved, the final order will include the following:

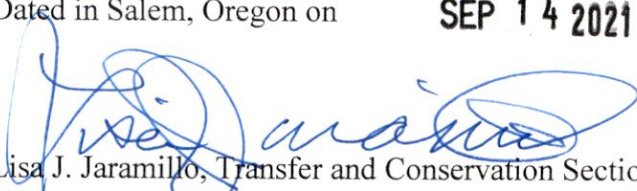
1. *The additional points of appropriation, change in points of appropriation and change in places of use proposed in Transfer Application T-13257 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained Certificates 48659, 48660 and 92120 and any related decree.*
3. *Water right Certificates 48659 and 48660 are cancelled.*

4. *Water right Certificate 92120 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
5. *For water right Certificate 48659, the quantity of water diverted at the additional points of appropriation (Wells 1, 2, and 5), together with that diverted at the original point of appropriation (Well 4), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 4).*
6. *For water right Certificate, 48660 the quantity of water diverted at the additional points of appropriation (Wells 1, 2, and 5), together with that diverted at the original point of appropriation (Well 4), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 4).*
7. *For water right Certificate 92120 the quantity of water diverted at the new point of appropriation (Well 1), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 2).*
8. *For water right Certificate 92120 the quantity of water diverted at the additional points of appropriation (Wells 4 and 5), together with that diverted at the new point of appropriation (Well 1), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 2).*
9. *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.*
10. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
11. *The former places of use of the transferred rights shall no longer receive water under the rights.*
12. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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.*

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

Dated in Salem, Oregon on

SEP 14 2021



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

This Preliminary Determination was prepared by Scott Grew. If you have questions about the information in this document, you may reach him at scott.a.grew@oregon.gov or 503-986-0890.

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 . The Oregon Military Department does not have a toll free number.