



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

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January 24, 2022

VIA CERTIFIED MAIL AND E-MAIL

Applicant

KURT ELDON
RACHEL DANIELLE BEAUBIEN
32553 AIRPORT LANE
BURNS, OR 97720

SUBJECT: Water Right Transfer Application T-13715

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13715. 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.

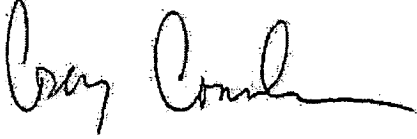
If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

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.

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 corey.a.courchane@water.oregon.gov or (503) 979-3917, if I may be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Corey Courchane". The signature is fluid and cursive, with a long horizontal stroke at the end.

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-13715
J R. Johnson, District 10 Watermaster (*via e-mail*)
John A. Short, Agent for the applicant (*via e-mail*)

encs

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13715, Harney County)	PROPOSING APPROVAL FOR AN
)	ADDITIONAL POINT OF APPROPRIATION
)	AND PARTIAL CANCELLATION OF A
)	WATER RIGHT

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

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Findings of Fact

1. On May 12, 2021, KURT ELDON AND RACHEL DANIELLE BEAUBIEN filed an application for an additional point of appropriation under Certificate 89306. The Department assigned the application number T-13715.
2. Notice of the application for transfer was published on May 25, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 24, 2012, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of a deficiency in the application. The Evidence of Use supporting documentation indicates some areas in the southern portions of tax lot 1000 and 1100, being buildings and paved areas, which have been in place since at least 2005. These areas are also not identified on 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.

map, as required by Oregon Administrative Rule 690-380-3100(2)(i). Therefore, the water use as authorized by Certificate 89306 could not have been beneficially used in the identified areas within the previous 5 years prior to submittal of the application, being May 12, 2016. The applicant needs to submit a revised table and map, and the Department requested that the deficiency be resolved by October 25, 2021.

4. On October 22, 2021, the Department received a revised Table 2, map, and Affidavits for the Partial Cancellation of Water Right Certificate 89306 from Kurt and Rachel Beaubien, and Al and Pat Albertson.
5. On November 17, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13715 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of December 20, 2021, 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.
6. On December 2, 2021, the applicant's agent requested, on behalf of the applicant, to extend the deadline 5 years for completing beneficial use of the water, to provide ample time to secure contractors and meet the transfer requirements.
7. The portion of the right to be transferred is as follows:

Certificate: 89306 in the name of RILEY AND SEWELL (perfected under Permit G-297)
Use: IRRIGATION OF 13.92 ACRES AND SUPPLEMENTAL IRRIGATION OF 5.12 ACRES
Priority Date: APRIL 20, 1956
Rate: 0.181 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 and shall conform to such reasonable rotation system as may be ordered by the proper state officer.
Source: WELL No. 3, tributary of POISON CREEK SLOUGH

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	31 E	WM	11	SW SE	WELL NO. 3 - 40 FEET NORTH AND 2640 FEET EAST FROM THE SW CORNER OF SECTION 11

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	31 E	WM	11	SE SW	13.92

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	31 E	WM	11	NE SW	1.00
23 S	31 E	WM	11	SE SW	4.12
Total					5.12

8. Transfer Application T-13715 proposes an additional point of appropriation approximately 840 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	31 E	WM	11	SE SW	WELL APOA - 730 FEET NORTH AND 540 FEET WEST FROM THE S1/4 CORNER OF SECTION 11

Transfer Review Criteria (OAR 690-380-4010)

9. Evidence was submitted with the application indicating that water has been used within the last five years according to the terms and conditions of the right. However, aerial photographs of the lands to which the right is appurtenant, suggest that there has been an extended period of time during which the right was not exercised on a portion of the authorized place of use.
10. 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-13715.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

Partial Cancellation of a Water Right

14. On October 22, 2021, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Kurt and Rachel Beaubien. The portion of the right to be cancelled is as follows:

Certificate: 89306 in the name of RILEY AND SEWELL (perfected under Permit G-297)
Use: IRRIGATION OF 0.12 ACRES AND SUPPLEMENTAL IRRIGATION OF 0.98 ACRES
Priority Date: APRIL 20, 1956
Rate: 0.010 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 and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Source: WELL No. 3, tributary of POISON CREEK SLOUGH

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	31 E	WM	11	SW SE	WELL NO. 3 - 40 FEET NORTH AND 2640 FEET EAST FROM THE SW CORNER OF SECTION 11

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
23 S	31 E	WM	11	SE SW	1100	0.12

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
23 S	31 E	WM	11	SE SW	1100	0.98

15. On October 22, 2021, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Al and Pat Albertson. The portion of the right to be cancelled is as follows:

Certificate: 89306 in the name of RILEY AND SEWELL (perfected under Permit G-297)

Use: IRRIGATION OF 0.25 ACRES

Priority Date: APRIL 20, 1956

Rate: 0.002 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 and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Source: WELL No. 3, tributary of POISON CREEK SLOUGH

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	31 E	WM	11	SW SE	WELL NO. 3 - 40 FEET NORTH AND 2640 FEET EAST FROM THE SW CORNER OF SECTION 11

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
23 S	31 E	WM	11	SE SW	1000	0.25

Determination and Proposed Action

The additional point of appropriation proposed in Transfer Application T-13715 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved, and the portions of the abandoned right will be cancelled.

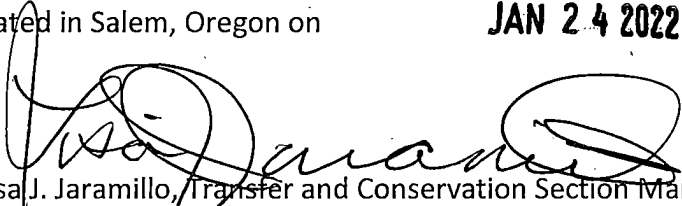
If Transfer Application T-13715 is approved, the final order will include the following:

1. *The additional point of appropriation proposed in Transfer Application T-13715 is approved. The portions of the right that have been abandoned are cancelled.*
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 89306 and any related decree.*
3. *Water right Certificate 89306 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.*
4. *The quantity of water diverted at the new additional point of appropriation (Well APOA), together with that diverted at the original point of appropriation (Well No. 3), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well No. 3).*
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 point of appropriation.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2027**. 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 change and full beneficial use of the water.*

8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on

JAN 24 2022


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 503-979-3917 or corey.a.courchane@water.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 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.