



Oregon

Tina Kotek, Governor

March 16, 2022

VIA CERTIFIED MAIL AND E-MAIL

Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone 503 986-0900

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www.oregon.gov/owrd

Applicant

SHANE OTLEY AND
CRYSTAL OTLEY
67976 OIL WELL RD
BURNS, OR 97720

SUBJECT: Water Right Transfer Application T-14082

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-14082. 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@water.oregon.gov or 503-986-0890 if I may be of assistance.

Sincerely,

Scott Grew

Transfer Specialist

cc: Transfer file T-14082
Dally Swindlehurst, 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-14082, Harney County	)	PROPOSING APPROVAL OF ADDITIONAL
	)	POINTS 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

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Findings of Fact

1. On September 1, 2022, SHANE OTLEY AND CRYSTAL OTLEY filed an application for additional points of appropriation and changes in place of use under Certificates 32082 and 94169. The Department assigned the application number T-14082.
2. Notice of the application for transfer was published on September 13, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 19, 2023, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-14082 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of February 19, 2023, 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
4. On January 20, 2023, the agent for the applicant requested the completion date of October 1, 2028 to provide time for the construction of the new irrigation system. The Department granted the longer time for completion per OAR 690-380-5140 (3).

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: 32082 in the name of JOHN WOOD (perfected under Permit G-388)
Use: IRRIGATION of 26.1 ACRES
Priority Date: NOVEMBER 8, 1956
Rate: 0.33 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: A WELL, a tributary of SILVIES RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	32 E	WM	5	SE NE	21.5 CHAINS SOUTH AND 11.0 CHAINS WEST FROM THE NE CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	32 E	WM	5	SE NE	21.0
24 S	32 E	WM	5	NE SE	5.1
				Total	26.1

6. Transfer Application T-14082 proposes additional points of appropriation with approximate distances as described below:

Twp	Rng	Mer	Sec	Q-Q	G Lot	Measured Distances	Distance from Authorized Well in Miles (mi.)
24 S	32 E	WM	5	NE NE	1	WELL #5 – 730 FEET SOUTH AND 10 FEET WEST FROM THE NE CORNER OF SECTION 5	0.2 mi
24 S	32 E	WM	5	SW NE		WELL #3 – 2540 FEET SOUTH AND 2120 FEET WEST FROM THE NE CORNER OF SECTION 5	0.4 mi.
24 S	32 E	WM	5	NE SE		WELL #2 – 3000 FEET SOUTH AND 1010 FEET WEST FROM THE NE CORNER OF SECTION 5	0.3 mi.
24 S	32 E	WM	5	NE SE		WELL #6 – 3700 FEET SOUTH AND 1060 FEET WEST FROM THE NE CORNER OF SECTION 5	0.4 mi.
24 S	32 E	WM	5	NE SW		WELL #4 – 3600 FEET SOUTH AND 3480 FEET WEST FROM THE NE CORNER OF SECTION 5	0.7 mi.

7. Transfer Application T-14082 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	32 E	WM	5	SW NE	16.7
24 S	32 E	WM	5	SE NE	7.3
24 S	32 E	WM	5	NE SE	1.0
24 S	32 E	WM	5	NW SE	1.1
Total					26.1

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

Certificate: 94169 in the name of SHANE OTLEY, CRYSTAL OTLEY (perfected under Permit G-16255)
Use: IRRIGATION of 99.7 ACRES
Priority Date: NOVEMBER 20, 2006
Rate: 1.25 CUBIC FEET PER SECOND
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.
Period of Use: MARCH 1 THROUGH OCTOBER 31
Source: A WELL (HARN 901) IN EMBREE SLOUGH BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	32 E	WM	5	SE NE	1470 FEET SOUTH AND 730 FEET WEST FROM THE NE CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
24 S	32 E	WM	5	NE NE	1	26.7
24 S	32 E	WM	5	NW NE	2	27.0
24 S	32 E	WM	5	SW NE		31.9
24 S	32 E	WM	5	SE NE		13.0
24 S	32 E	WM	5	NE SE		0.2
24 S	32 E	WM	5	NW SE		0.9
Total						99.7

9. Transfer Application T-14082 proposes additional points of appropriation with approximate distances as described below:

Twp	Rng	Mer	Sec	Q-Q	G Lot	Measured Distances	Distance from Authorized Well in Miles (mi.)
24 S	32 E	WM	5	NE NE	1	WELL #5 – 730 FEET SOUTH AND 10 FEET WEST FROM THE NE CORNER OF SECTION 5	0.2 mi
24 S	32 E	WM	5	SW NE		WELL #3 – 2540 FEET SOUTH AND 2120 FEET WEST FROM THE NE CORNER OF SECTION 5	0.4 mi.
24 S	32 E	WM	5	NE SE		WELL #2 – 3000 FEET SOUTH AND 1010 FEET WEST FROM THE NE CORNER OF SECTION 5	0.3 mi.
24 S	32 E	WM	5	NE SE		WELL #6 – 3700 FEET SOUTH AND 1060 FEET WEST FROM THE NE CORNER OF SECTION 5	0.4 mi.
24 S	32 E	WM	5	NE SW		WELL #4 – 3600 FEET SOUTH AND 3480 FEET WEST FROM THE NE CORNER OF SECTION 5	0.7 mi.

10. Transfer Application T-14082 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	G Lot	Acres
24 S	32 E	WM	5	NE NE	1	27.6
24 S	32 E	WM	5	NW NE	2	27.2
24 S	32 E	WM	5	SW NE		18.1
24 S	32 E	WM	5	SE NE		26.8
					Total	99.7

Transfer Review Criteria (OAR 690-380-4010)

11. 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.
12. 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-14082.
13. The proposed change would not result in enlargement of the rights.
14. The proposed change would not result in injury to other water rights.
15. All other application requirements are met.

Determination and Proposed Action

The additional points of appropriation and changes in places of use proposed in Transfer Application T-14082 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.

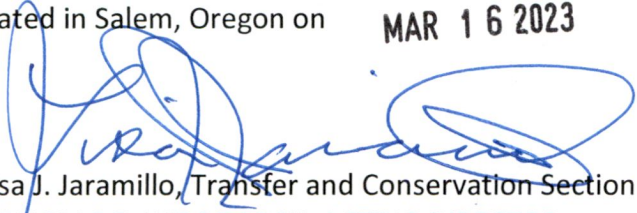
If Transfer Application T-14082 is approved, the final order will include the following:

1. *The additional points of appropriation and changes in places of use proposed in Transfer Application T-14082 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the places of use described and is subject to all other conditions and limitations contained in Certificates 32082 and 94169 and any related decree.*
3. *Water right Certificates 32082 and 94169 are cancelled.*
4. *The quantity of water diverted at the new additional points of appropriation (Wells 2,3,4,5 and 6), together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
5. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
6. *The former place of use of the transferred rights shall no longer receive water under the rights.*
7. *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.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2028**. 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, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on

MAR 16 2023



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING 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@water.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.

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.