

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-14211, Linn County)	PROPOSING APPROVAL OF A CHANGE IN
)	PLACES OF USE

Authority

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

GLEN, HELEN, AND JEREMY BIRKY
PO BOX 132
CRABTREE, OR 97335

Findings of Fact

1. On April 6, 2023, Glen, Helen, and Jeremy Birky filed an application to change the places of use under Certificates 43483 and 55945. The Department assigned the application number T-14211.
2. Notice of the application for transfer was published on April 11, 2023, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 12, 2024, the Department sent a copy of the draft Preliminary Determination to the applicants, proposing to approve Transfer Application T-14211. The draft Preliminary Determination cover letter provided a deadline of October 11, 2024, for the applicants to respond and submit the required information. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
4. On October 16, 2023, the Department received an amended map correcting an error in acreage.

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 the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, of this preliminary determination.

5. The portion of the first right to be transferred is as follows: **222697**

Certificate: 43483 in the name of CHARLES AND ETHEL SPIKER (perfected under Permit S-32518)
Use: IRRIGATION OF 27.0 ACRES
Priority Date: APRIL 12, 1967
Rate: 0.34 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: CRABTREE CREEK, a tributary of SOUTH SANTIAM RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
11 S	1 W	WM	12	NE SE	90 FEET SOUTH AND 110 FEET WEST FROM THE E1/4 CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
10 S	1 W	WM	33	SW SE	3	6.6
11 S	1 W	WM	4	NW NE	1	20.4
Total						27.0

6. Transfer Application T-14211 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
11 S	1 W	WM	4	NW SE	3	22.1
11 S	1 W	WM	4	SW SE	4	4.9
Total						27.0

7. The second right to be transferred is as follows: **222698**

Certificate: 55945 in the name of WESLEY D. JULSRUD (perfected under Permit S-41926)
Use: IRRIGATION OF 26.4 ACRES
Priority Date: MAY 16, 1977
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, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: CRABTREE CREEK, a tributary of SOUTH SANTIAM RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
11 S	1 W	WM	12	NE SE	90 FEET SOUTH AND 110 FEET WEST FROM THE E1/4 CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
10 S	1 W	WM	33	SW SE	3	18.6
11 S	1 W	WM	4	NW NE	1	5.8
11 S	1 W	WM	4	SW NE	2	2.0
Total						26.4

8. Transfer Application T-14211 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
11 S	1 W	WM	4	SW NE	2	18.2
11 S	1 W	WM	4	NW SE	3	8.2
Total						26.4

Transfer Review Criteria [OAR 690-380-0100(14), OAR 690-380-4010(2), OAR 690-380-2200 and OAR 690-380-2110(2)]

9. Water has been used within the five-year period prior to submittal of Transfer Application T-14211 according to the terms and conditions of the right. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
10. A water delivery system sufficient to use the full amount of water allowed under the existing rights was present within the five-year period prior to submittal of Transfer Application T-14211.
11. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
12. The proposed changes, as conditioned, would not result in enlargement of the rights.
13. The proposed changes, as conditioned, would not result in injury to other existing water rights.
14. All other application requirements are met.

Determination and Proposed Action

The change in places of use proposed in Transfer Application T-14211 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-14211 is approved, the final order will include the following:

- 1. The change in places of use proposed in Transfer Application T-14211 is 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 43483 and 55945 and any related decree.*
- 3. Approval of this transfer application does not constitute nor grant legal access onto or through another person's property for purposes of accessing the new places of use.*
- 4. Water right Certificates 43483 and 55945 are cancelled. A new certificate will be issued describing that portion of Certificate 43483 not affected by this transfer.*
- 5. The former places of use of the transferred rights shall no longer receive water under the rights.*
- 6. 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 diversion.*
 - 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.*
- 7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2026**. 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.*
- 8. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on

Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
IVAN GALL, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Elyse Richman. If you have questions about the information in this document, you may reach me at 971-701-5485 or at elyse.d.richman@water.oregon.gov.

Protests

Under the provisions of ORS 540.520(6) & (7) and OAR 690-380-4030, within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, any person may file, jointly or severally, a protest expressing opposition of approval of the transfer application and disagreement with this Preliminary Determination or a standing statement in support of this Preliminary Determination. If this Preliminary Determination determines that a change in point of diversion or appropriation would result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050. Protests and standing statements must be received by the Water Resources Department within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later.

Protests must be in writing and received in hard copy form with the appropriate statutory protest filing fee; protests cannot be filed by electronic mail. [OAR 690-002-0025(3) and 690-380-0100(9)]. The protest must include the following:

- The person's name, address, and telephone number;
- All reasonably ascertainable issues and all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue may preclude consideration of the issue during the hearing;
- If you are the applicant, a protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$950 required by ORS 536.050 and proof of service of the protest upon the applicant.

Requests for Standing

Under the provisions of OAR 690-380-4030(5), the Department shall provide to persons who have filed standing statements as defined under OAR 690-380-0100(11) notice of any differences between the Department's Preliminary Determination and the Final Order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

Requests for standing must be received in the Water Resources Department no later than 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the preliminary determination as issued.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been filed under OAR 690-380-4030. In accordance with OAR 690-380-4200, notice and conduct of the hearing shall:

- Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties stipulate otherwise; and
- If a protest has asserted that a water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

If after hearing the Department issues a proposed Final Order finding that a change in point of diversion or appropriation will result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050 within 15 days of receipt of the proposed order. Notwithstanding 690-002-0175, if the applicant files a notification of intent to pursue approval of the transfer under 690-380-5030 to 690-380-5050, the deadline for filing exceptions to the proposed order shall be 30 days after the Department provides notice to the parties that the transfer does not meet the requirements of 690-380-5030 to 690-380-5050.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear, or fail to appear at a scheduled hearing, the Director may issue a final order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions, or public or private organizations are represented by

an attorney. However, consistent with OAR 690-002-0020 and OAR 690-137-0555, an agency representative may represent partnerships, corporations, associations, governmental subdivisions or public, or private organizations if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active-duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Will Davidson at 503-507-2749.

If you have questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.

Address any correspondence to: Oregon Water Resources Department, Transfer and Conservation Section, 725 Summer Street NE, Suite A, Salem OR 97301-1266.

STATE OF OREGON

COUNTY OF LINN

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

CHARLES AND ETHEL SPIKER
 RT 3 BOX 166
 SCIO, OR 97374

confirms the right to use the waters of CRABTREE CREEK, a tributary of SOUTH SANTIAM RIVER, for IRRIGATION of 1.4 ACRES.

This right was perfected under Permit S-32518. The date of priority is APRIL 12, 1967. The amount of water to which this right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.02 CUBIC FOOT PER SECOND, or its equivalent in case of rotation, measured at the point of diversion.

The point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
11 S	1 W	WM	12	NE SE	90 FEET SOUTH AND 110 FEET WEST FROM THE E1/4 CORNER OF SECTION 12

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 2.5 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.

A description of the place of use under the right hereby confirmed, and to which such right is appurtenant, is as follows:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
11 S	1 W	WM	4	NW NE	1	0.7
11 S	1 W	WM	4	SW NE	2	0.7
					Total	1.4

This certificate describes that portion of water right Certificate 43483, State Record of Water Right Certificates, NOT modified by the provisions of an order of the Water Resources Director entered _____, approving Transfer Application T-14211.

The issuance of this superseding certificate does not confirm the status of the water right in regard to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.

The right to the use of the water for the purposes aforesaid is restricted to the lands or place if use here described and is subject to the existing minimum flow policies established by the Water Policy Review Board.

WITNESS the signature of the Water Resources Director, affixed _____.

Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
IVAN GALL, DIRECTOR
Oregon Water Resources Department