

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

In the Matter of Transfer Application            )     FINAL ORDER APPROVING A  
T-12983, Marion, Yamhill County            )     CHANGE IN PLACE 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**

JER-ANN LLC  
c/o: TONY SMITH  
19101 RIVER RD NE  
ST PAUL, OR 97137

**Findings of Fact**

1. On July 23, 2018, JER-ANN LLC, c/o TONY SMITH filed an application to change the place of use under Certificate 36332. The Department assigned the application number T-12983.
2. Notice of the application for transfer was published on July 31, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 5, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12983 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 7, 2018, for the applicant 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.
4. On September 10, 2019, the Department issued a Preliminary Determination proposing to approve Transfer T-12983 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on September 10, 2019, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

5. The right to be transferred is as follows:

**Certificate:** 36332 in the name of JEROME J. SMITH (perfected under Permit S-32325)  
**Use:** IRRIGATION of 236.4 ACRES  
**Priority Date:** JANUARY 31, 1967  
**Rate:** 1.61 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, 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:** WILLAMETTE RIVER, tributary to the COLUMBIA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 S	3 W	WM	26	SW NE	7	1210 FEET SOUTH AND 1600 FEET EAST FROM THE NE CORNER OF LOT 11 IN SECTION 26

**Authorized Place of Use:**

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
4 S	3 W	WM	25	SW NE		66	27.5
4 S	3 W	WM	25	SE NE		66	18.1
4 S	3 W	WM	25	NE NW	2		3.2
4 S	3 W	WM	25	NW NW	1		29.8
4 S	3 W	WM	25	SW NW			37.2
4 S	3 W	WM	25	SE NW	3		0.6
4 S	3 W	WM	25	SE NW		66	24.0
4 S	3 W	WM	25	NE SW		66	6.8
4 S	3 W	WM	25	NW SW	5		6.2
4 S	3 W	WM	25	NE SE		66	6.3
4 S	3 W	WM	25	NW SE		66	8.5
4 S	3 W	WM	26	NE NE	11		30.0
4 S	3 W	WM	26	SE NE	7		31.0
4 S	3 W	WM	26	NE SE	6		7.2
						Total	236.4

6. Transfer Application T-12983 proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
4 S	3 W	WM	25	SW NE		66	27.5
4 S	3 W	WM	25	SE NE		66	11.6
4 S	3 W	WM	25	NE NW	2		3.2
4 S	3 W	WM	25	NW NW	1		29.8
4 S	3 W	WM	25	SW NW			37.2
4 S	3 W	WM	25	SE NW	3		0.6
4 S	3 W	WM	25	SE NW		66	24.0
4 S	3 W	WM	25	NE SW		66	6.8
4 S	3 W	WM	25	NW SW	5		6.2

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
4 S	3 W	WM	25	NE SE		3.8
4 S	3 W	WM	25	NW SE		8.5
4 S	3 W	WM	26	NE NE	11	30.0
4 S	3 W	WM	26	SE NE	7	40.0
4 S	3 W	WM	26	NE SE	6	7.2
Total						236.4

7. The Department received information from the Certified Water Right Examiner indicating a scrivener's error in the authorized point of diversion location information described in Certificate 36332. The accurate location of the authorized point of diversion is as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 S	3 W	WM	26	SW NE	7	1210 FEET SOUTH AND 1600 FEET WEST FROM THE NE CORNER OF LOT 11 IN SECTION 26

***Transfer Review Criteria [OAR 690-380-4010(2)]***

8. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
9. 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-12983.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.
12. All other application requirements are met.

**Conclusions of Law**

The change in place of use proposed in Transfer Application T-12983 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The change in place of use proposed in Transfer Application T-12983 is 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 in Certificate 36332 and any related decree.
3. Water right Certificate 36332 is cancelled.
4. The former place of use of the transferred right shall no longer receive water under the right.

5. 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 change and full beneficial use of the water.
6. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this DEC 16 2019



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

Mailing Date: DEC 18 2019