

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

In the Matter of Transfer Application	)	FINAL ORDER
T-13596, Wasco County	)	APPROVING CHANGES IN POINTS OF
	)	APPROPRIATION AND PLACES 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**

DESIGN, LLC.  
1600 AMPHITHEATRE PARKWAY  
MOUNTAIN VIEW, CA 94043

**Findings of Fact**

1. On February 3, 2021, DESIGN, LLC. filed an application to change the points of appropriation and to change the places of use under Certificates 46838 and 82480. The Department assigned the application number T-13596.
2. Notice of the application for transfer was published on February 23, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 2, 1978, the Department issued Certificate 46838, authorizing the use of 1.2 cubic feet per second (CFS) from WELL NO. 3 for Industrial purposes.
4. On July 8, 2010, the Department received a notice for specific to general industrial use changes under Certificate 46838 and under Certificate 82480 (original Certificate 46837, confirming Certificate 82480 was issued as a result of the approval of T-5607) per ORS 540.520(9).

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. On July 26, 2010, the Department recognized the change in use of the rights from specific to general industrial and added Tax Lot 1100, T2N, R13E, Section 28, WM, as requested by the applicant and as described in the place of use description in FOF No. 12.
6. On January 31, 2022, DESIGN, LLC., also filed Transfer Application T-13904, which proposes changes to the remaining portion of Certificate 82480. Transfer Application T-13596 and Transfer Application T-13904, will be issued concurrently. No remaining right will be issued for Certificate 82480.
7. On August 22, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13596 to the applicant. The draft Preliminary Determination contained errors in the description of the place of use under Certificates 46838 and 82480. In addition, the watermaster revised the watermaster review after the draft Preliminary Determination was issued, adding conditions that were not included on the original draft Preliminary Determination sent to the applicant.
8. On September 22, 2022, the agent for the applicant requested the completion date be extended, pursuant to OAR 690-380-5140 (3). The Department extended the completion date of the transfer to October 1, 2029.
9. On September 22, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13596 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 22, 2022, for the applicant to respond. The applicant requested that the Department correct scrivener's errors incorrectly describing the proposed place of use and the completion date.
10. On February 7, 2023, the Department mailed a copy of the Revised Draft Preliminary Determination proposing to approve Transfer Application T-13596 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 7, 2023, for the applicant to respond. The applicant requested that the Department correct scrivener's errors incorrectly describing the proposed place of use and the completion date.
11. On September 27, 2023, the Department mailed a copy of the 2<sup>nd</sup> Revised Draft Preliminary Determination proposing to approve Transfer Application T-13596 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 27, 2023, 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.
12. On January 19, 2024, the Department issued a Preliminary Determination proposing to approve Transfer T-13596 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 January 23, 2024, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

13. The first right to be transferred is as follows:

**Certificate:** 46838 in the name of MARTIN MARIETTA ALUMINUM INC. (perfected under Permit G-647)  
**Use:** INDUSTRIAL USE  
**Priority Date:** AUGUST 19, 1957  
**Rate:** 1.2 CUBIC FEET PER SECOND  
**Source:** WELL No. 3, a tributary of COLUMBIA RIVER

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 N	13 E	WM	28	SW SW	41	WELL NO. 3 - 640 FEET NORTH AND 1880 FEET WEST FROM THE S1/4 CORNER OF SECTION 28 AS PROJECTED WITHIN SHANG DLC 41

**Authorized Place of Use:**

INDUSTRIAL USE					
Twp	Rng	Mer	Sec	Tax Lot	Q-Q
2 N	13 E	WM	28	705	NE SW
2 N	13 E	WM	28	700	NW SW
2 N	13 E	WM	28	700	SW SW
2 N	13 E	WM	28	700	SE SW
2 N	13 E	WM	28	1100	SW SW
2 N	13 E	WM	28	1100	SE SW
2 N	13 E	WM	33	1100	NE NW
2 N	13 E	WM	33	1100	NW NW

14. Transfer Application T-13596 proposes to move the authorized point of appropriation approximately 596 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 N	13 E	WM	28	SW SW	41	WELL 5 - 50 FEET NORTH AND 610 FEET EAST FROM THE SW CORNER OF SECTION 28

15. Transfer Application T-13596 also proposes to change the place of use of the right to:

INDUSTRIAL USE							
Twp	Rng	Mer	Sec	GL	DLC	Tax Lot	Q-Q
2 N	13 E	WM	28		41	1100	SW SW
2 N	13 E	WM	28		41	1100	SE SW
2 N	13 E	WM	28	6		1100	SE SW
2 N	13 E	WM	33	5		1100	NE NW
2 N	13 E	WM	33		41	1100	NE NW
2 N	13 E	WM	33		41	1100	NW NW

16. The portion of the second right to be transferred is as follows:

**Certificate:** 82480 in the name of MARTIN MARIETTA CORP (perfected under Permit G-646)  
**Use:** INDUSTRIAL USE  
**Priority Date:** AUGUST 19, 1957  
**Rate:** 0.8 CUBIC FOOT PER SECOND

Source: WELL 3 AND WELL 4, in the COLUMBIA RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 N	13 E	WM	28	SW SW	41	WELL 3 - 300 FEET SOUTH AND 1820 FEET WEST FROM THE SE CORNER OF DLC 39
2 N	13 E	WM	28	SE SW	39	WELL 4 - 60 FEET NORTH AND 1040 FEET WEST FROM THE SE CORNER OF DLC 39

**Authorized Place of Use:**

INDUSTRIAL USE						
Twp	Rng	Mer	Sec	Tax Lot	Q-Q	
2 N	13 E	WM	28	705	NE SW	
2 N	13 E	WM	28	700	NW SW	
2 N	13 E	WM	28	700	SW SW	
2 N	13 E	WM	28	700	SE SW	
2 N	13 E	WM	28	1100	SW SW	
2 N	13 E	WM	28	1100	SE SW	
2 N	13 E	WM	33	1100	NE NW	
2 N	13 E	WM	33	1100	NW NW	

17. Transfer Application T-13596 proposes to move the authorized points of appropriation approximately 532 and 1227 feet respectively from the existing points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 N	13 E	WM	28	SW SW	41	WELL 5 - 50 FEET NORTH AND 610 FEET EAST FROM THE SW CORNER OF SECTION 28

18. Transfer Application T-13596 also proposes to change the place of use of the right to:

INDUSTRIAL USE							
Twp	Rng	Mer	Sec	GL	DLC	Tax Lot	Q-Q
2 N	13 E	WM	28		41	1100	SW SW
2 N	13 E	WM	28		41	1100	SE SW
2 N	13 E	WM	28	6		1100	SE SW
2 N	13 E	WM	33	5		1100	NE NW
2 N	13 E	WM	33		41	1100	NE NW
2 N	13 E	WM	33		41	1100	NW NW

19. Additional monitoring is required to ensure approval of the transfer will not adversely impact the groundwater resource. Certificates 46838 and 82480, are both located in a Critical Groundwater Area. Installation of totalizing flow meters are required as well as monthly reporting on or near the 1st of each month of flow meter readings and water levels in the wells. Measuring tubes are also required. The water user shall allow the Watermaster access to measure the water level and read the flow meter on a monthly basis. The Watermaster shall request access upon reasonable notice

***Transfer Review Criteria (OAR 690-380-4010)***

20. Water has been used within the last five years prior to the submittal of Transfer Application T-13596 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.
21. A pump, pipeline, elevated storage tower and conveyance 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-13596.
22. The proposed change as conditioned would not result in enlargement of the rights.
23. The proposed change as conditioned would not result in injury to other water rights.
24. All other application requirements are met.

**Determination and Proposed Action**

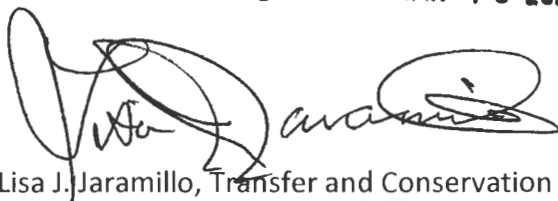
The changes in points of appropriation and changes in places of use proposed in Transfer Application T-13596 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

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

1. The changes in points of appropriation and changes in places of use proposed in Transfer Application T-13596 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 in Certificate 46838 and 82480 and any related decree.
3. Water right Certificates 46838 and 82480 are cancelled.
4. The quantity of water diverted under Certificate 46838 at the new point of appropriation (Well 5), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 3).
5. The quantity of water diverted under Certificate 82480 at the new point of appropriation (Well 5), shall not exceed the quantity of water lawfully available at the original points of appropriation (Well 3 and Well 4).
6. Water use measurement and water level data collection 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.
  - d. The water user shall install and maintain a dedicated measuring tube for the purpose of collecting water level measurements from the well.
  - e. The water user shall allow the Watermaster access to measure the water level and read the flow meter on a monthly basis. The Watermaster shall request access upon reasonable notice.
7. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
  8. The former places of use of the transferred rights shall no longer receive water under the rights.
  9. Additional monitoring is required to ensure approval of the transfer will not adversely impact the groundwater resource. Certificates 46838 and 82480, are both located in a Critical Groundwater Area. Installation of totalizing flow meters are required as well as monthly reporting on or near the 1st of each month of flow meter readings and water levels in the wells. Measuring tubes are also required. The water user shall allow the Watermaster access to measure the water level and read the flow meter on a monthly basis. The Watermaster shall request access upon reasonable notice.
  10. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2029**. 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.
  11. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated in Salem, Oregon on **MAR 13 2024**



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
DOUGLAS E. WOODCOCK, ACTING DIRECTOR  
Oregon Water Resources Department

Mailing date:           **MAR 15 2024**