

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

In the Matter of Transfer Application            )  
T-13904, Wasco County                            )  
  )  
  )     FINAL ORDER  
  )     APPROVING A CHANGE IN POINTS OF  
  )     APPROPRIATION, CHANGE IN PLACES OF  
  )     USE AND CHANGES IN CHARACTER 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

**Receiving Landowner**

CITY OF THE DALLES  
DEPARTMENT OF PUBLIC WORKS  
1215 WEST FIRST STREET  
THE DALLES, OR 97058

**Findings of Fact**

1. On January 31, 2022, DESIGN, LLC, filed an application to change the points of appropriation, change the places of use and change the character of use under Certificates 46835, 46836, 46839 and 82480. The Department assigned the application number T-13904.
2. Notice of the application for transfer was published on February 8, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 8, 2010, the Department received a notice for a specific to general industrial use change 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).
4. 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 described in the place of use description in FOF No. 22.

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 February 3, 2021, DESIGN, LLC, also filed Transfer Application T-13596, which proposes changes to the remaining portion of Certificate 82480. Transfer Application T-13904 and Transfer Application T-13596, will be issued concurrently. No remaining right will be issued for Certificate 82480.
6. On January 31, 2022, the applicant requested a completion date of October 1, 2044, to conduct planning, develop engineering plans, and for construction of the necessary infrastructure. The Department granted this completion date pursuant to OAR 690-380-5140.
7. On February 2, 2023, The Department contacted the agent for the applicant by email requesting clarification of the changes proposed by Transfer Application T-13904.
8. On February 2, 2023, the agent for the applicant provided clarification of the changes requested by Transfer Application T-13904.
9. On September 27, 2023, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13904 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.
10. On January 26, 2024, the Department issued a Preliminary Determination proposing to approve Transfer T-13904 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 30, 2024, and in the Dalles Chronicle newspaper on January 31, 2024 and February 7, 2024, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
11. The first right to be transferred is as follows:

**Certificate:** 46835 in the name of MARTIN MARIETTA ALUMINUM INC. (perfected under Permit G-338)  
**Use:** INDUSTRIAL  
**Priority Date:** SEPTEMBER 7, 1956  
**Rate:** 2.9 CUBIC FEET PER SECOND  
**Source:** WELL No. 1, a tributary of COLUMBIA RIVER

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 N	13 E	WM	28	NW SW	39	WELL NO. 1 - 1320 FEET NORTH AND 2260 FEET WEST FROM THE S1/4 CORNER OF SECTION 28

**Authorized Place of Use:**

INDUSTRIAL				
Twp	Rng	Mer	Sec	Q-Q
2 N	13 E	WM	28	NE SW
2 N	13 E	WM	28	NW SW

INDUSTRIAL				
Twp	Rng	Mer	Sec	Q-Q
2 N	13 E	WM	28	SW SW
2 N	13 E	WM	28	SE SW

12. Transfer Application T-13904 proposes to move the authorized point of appropriation, with approximate distances from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance From Authorized Well
2 N	13 E	WM	33	NE NW	RIVERSIDE WELL 2 - 340 FEET SOUTH AND 1360 FEET EAST FROM THE NW CORNER OF SECTION 33	WELL NO. 1 - 0.37 mi
2 N	13 E	WM	33	NW NW	RIVERSIDE WELL 1 - 620 FEET SOUTH AND 905 FEET EAST FROM THE NW CORNER OF SECTION 33.	WELL NO. 1 - 0.38 mi

13. Transfer Application T-13904 also proposes to change the place of use of the right to:

MUNICIPAL USE
City of The Dalles Service Area

14. Transfer Application T-13904 proposes to change the character of use to municipal use.

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

**Certificate:** 46836 in the name of MARTIN MARIETTA ALUMINUM INC. (perfected under Permit G-645)

**Use:** INDUSTRIAL

**Priority Date:** AUGUST 19, 1957

**Rate:** 1.11 CUBIC FEET PER SECOND

**Source:** WELL NO. 1, a tributary of COLUMBIA RIVER

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 N	13 E	WM	28	NW SW	39	WELL NO. 1 - 1320 FEET NORTH AND 2260 FEET WEST FROM THE S1/4 CORNER OF SECTION 28

**Authorized Place of Use:**

INDUSTRIAL				
Twp	Rng	Mer	Sec	Q-Q
2 N	13 E	WM	28	NE SW
2 N	13 E	WM	28	NW SW
2 N	13 E	WM	28	SW SW
2 N	13 E	WM	28	SE SW

16. Transfer Application T-13904 proposes to move the authorized point of appropriation, with approximate distances from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance From Authorized Well
2 N	13 E	WM	33	NE NW	RIVERSIDE WELL 2 - 340 FEET SOUTH AND 1360 FEET EAST FROM THE NW CORNER OF SECTION 33	WELL NO. 1 - 0.37 mi
2 N	13 E	WM	33	NW NW	RIVERSIDE WELL 1 - 620 FEET SOUTH AND 905 FEET EAST FROM THE NW CORNER OF SECTION 33	WELL NO. 1 - 0.38 mi

17. Transfer Application T-13904 also proposes to change the place of use of the right to:

MUNICIPAL USE
City of The Dalles Service Area

18. Transfer Application T-13904 proposes to change the character of use to municipal use.

19. The third right to be transferred is as follows:

**Certificate:** 46839 in the name of MARTIN MARIETTA ALUMINUM INC. (perfected under Permit G-648)

**Use:** INDUSTRIAL

**Priority Date:** AUGUST 19, 1957

**Rate:** 1.6 CUBIC FEET PER SECOND

**Source:** WELL NO. 4-A, a tributary of COLUMBIA RIVER

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 N	13 E	WM	28	SE SW	39	WELL NO. 4-A -970 FEET NORTH AND 1080 FEET WEST FROM THE S1/4 CORNER OF SECTION 28

**Authorized Place of Use:**

INDUSTRIAL				
Twp	Rng	Mer	Sec	Q-Q
2 N	13 E	WM	28	NE SW
2 N	13 E	WM	28	NW SW
2 N	13 E	WM	28	SW SW
2 N	13 E	WM	28	SE SW

20. Transfer Application T-13904 proposes to move the authorized point of appropriation, with approximate distances from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance From Authorized Well
2 N	13 E	WM	33	NE NW	RIVERSIDE WELL 2 - 340 FEET SOUTH AND 1360 FEET EAST FROM THE NW CORNER OF SECTION 33	WELL NO. 4-A - 0.24 mi
2 N	13 E	WM	33	NW NW	RIVERSIDE WELL 1 - 620 FEET SOUTH AND 905 FEET EAST FROM THE NW CORNER OF SECTION 33	WELL NO. 4-A - 0.32 mi

21. Transfer Application T-13904 also proposes to change the place of use of the right to:

MUNICIPAL USE
City of The Dalles Service Area

22. Transfer Application T-13904 proposes to change the character of use to municipal use.
23. The fourth 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:** 0.4 CUBIC FOOT PER SECOND  
**Limit/Duty:** The quantity of water appropriated at the new wells shall not exceed the quantity of water available at the old well under the subject right and shall not exceed 1.2 cubic foot per second.  
**Source:** WELL 3 and WELL 4 in the COLUMBIA RIVER BASIN

**Authorized Points 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	700, 705, 1000	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

24. Transfer Application T-13904 proposes to move the authorized points of appropriation with approximate distances from the existing points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance From Authorized Wells
2 N	13 E	WM	33	NE NW	RIVERSIDE WELL 2 - 340 FEET SOUTH AND 1360 FEET EAST FROM THE NW CORNER OF SECTION 33	WELL 3 - 0.25 mi WELL 4 - 0.32 mi
2 N	13 E	WM	33	NW NW	RIVERSIDE WELL 1 - 620 FEET SOUTH AND 905 FEET EAST FROM THE NW CORNER OF SECTION 33	WELL 3 - 0.2 mi WELL 4 - 0.23 mi

25. Transfer Application T-13904 also proposes to change the place of use of the right to:

MUNICIPAL USE
City of The Dalles Service Area

26. Transfer Application T-13904 proposes to change the character of use to municipal use.
27. The applicant does not meet the definition of a municipality under ORS 540.510(3)(b). The transferred rights will be lost if not assigned to and perfected by a municipality.
28. 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 690-380-4000(14), 690-380-4010(2) and OAR 690-380-2110(2)]***

29. 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.
30. 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-13904.
31. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
32. The proposed points of appropriation develop groundwater from the same aquifer as the authorized points of appropriation, as required by OAR 690-380-2110(2).
33. The proposed changes, as conditioned, would not result in enlargement of the rights.

34. The proposed changes, as conditioned, would not result in injury to other existing water rights.
35. All other application requirements are met.

### **Conclusion of Law**

The changes in points of appropriation, changes in places of use and changes in character of use proposed in Transfer Application T-13904 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, changes in places of use and changes in character of use proposed in Transfer Application T-13904 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 Certificates 46835, 46836, 46839, and 82480 and any related decree.
3. Water Right Certificates 46835, 46836, 46839, and 82480 are cancelled.
4. A remaining portion of Certificate 82480 not proposed for transfer under Transfer Application T-13904, is proposed for transfer under Transfer Application T-13596. Because Transfer Application T-13904 and Transfer Application T-13596 will be issued concurrently, no Remaining Right Certificate will be issued for the remaining portion of Certificate 82480.
5. Under Certificate 46835, the quantity of water diverted at the new points of appropriation (RIVERSIDE WELL 1 and RIVERSIDE WELL 2) shall not exceed the quantity of water lawfully available at the original point of appropriation (WELL NO. 1).
6. Under Certificate 46836, the quantity of water diverted at the new points of appropriation (RIVERSIDE WELL 1 and RIVERSIDE WELL 2) shall not exceed the quantity of water lawfully available at the original point of appropriation (WELL NO. 1).
7. Under Certificate 46839, the quantity of water diverted at the new points of appropriation (RIVERSIDE WELL 1 and RIVERSIDE WELL 2) shall not exceed the quantity of water lawfully available at the original point of appropriation (WELL NO. 4-A).
8. Under Certificate 82480, the quantity of water diverted at the new points of appropriation (RIVERSIDE WELL 1 and RIVERSIDE WELL 2) shall not exceed the quantity of water lawfully available at the original points of appropriation (WELL 3 and WELL 4).
9. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.

10. 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.
  - 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.
11. The former places of use of the transferred rights shall no longer receive water under the rights.
12. 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.
13. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2044**. 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.
14. 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 14 2024**