



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

September , 2017

Daniel M. Gomez
Virginia D. Gomez
11509 Upper Cow Creek RD
Azalea, OR 97410

SUBJECT: Water Right Transfer Application T-12503

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12503. 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, 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 Department's notice.

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 do not hesitate to contact me at Jessica.L.Joye@oregon.gov or by phone at 503-986-0814, if I may be of assistance.

Sincerely,

Jessica Joye
Transfer Specialist, Transfer and Conservation Section

cc: Transfer Application T-12503
Susan Douthit, District #15 Watermaster (*via e-mail*)
Nathan Reed, agent (*via email*)

Encl.

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12503, Douglas County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF DIVERSION

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

DANIEL M. GOMEZ
VIRGINIA D. GOMEZ
11509 UPPER COW CREEK RD
AZALEA, OR 97410

Findings of Fact

1. On October 13, 2016, DANIEL M. AND VIRGINIA D. GOMEZ filed an application to change the point of diversion under Certificate 62160. The Department assigned the application number T-12503.
2. Notice of the application for transfer was published on October 18, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 16, 2017, the Department notified the applicant of the deficiencies found during the initial review of the transfer.
4. On March 31, 2017, the Department received an amended Evidence of Use Affidavit and clarification that the transfer is proposing to change the point of diversion for 0.3 acres located on Tax Lot 1100.
5. On August 8, 2017, the Department contacted the applicant's agent, requesting clarification if the right proposed for transfer is also proposing to transfer the livestock portion of water right Certificate 62160.

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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6. On August 18, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12503 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of September 18, 2017, 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.
7. On August 8, 2017, the agent notified the Department that the applicant's intent is to also transfer the livestock portion of water right Certificate 62160.
8. The portion of the right to be transferred is as follows:

Certificate: 62160 in the name of FRANK H. LARSON
(perfected under Permit S-46359)

Use: IRRIGATION OF 0.3 ACRE AND LIVESTOCK

Priority Date: AUGUST 6, 1981

Rate: 0.0048 CUBIC FOOT PER SECOND (CFS); BEING 0.004 CFS FOR IRRIGATION AND 0.0008 CFS FOR LIVESTOCK

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-SEVENTIETH 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 3.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: COW CREEK, a tributary of SOUTH UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
32 S	4 W	WM	2	SE NE	560 FEET SOUTH AND 290 FEET EAST FROM THE NW CORNER OF THE SE¼ NE¼ OF SECTION 2

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	4 W	WM	2	SW NE	0.2
32 S	4 W	WM	2	SE NE	0.1
TOTAL					0.3

LIVESTOCK				
Twp	Rng	Mer	Sec	Q-Q
32 S	4 W	WM	2	SE NE

9. Transfer Application T-12503 proposes to move the authorized point of diversion approximately 800 feet to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
32 S	4 W	WM	2	SE NE	540 FEET SOUTH AND 31 FEET EAST FROM THE NW CORNER OF THE SE¼ NE¼ OF SECTION 2

10. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost share funds.

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

11. 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.
12. 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-12503.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in point of diversion proposed in Transfer Application T-12503 appears 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-12503 is approved, the final order will include the following:

1. *The change in point of diversion proposed in Transfer Application T-12503 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 62160 and any related decree.*
3. *Water right Certificate 62160 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

The water user shall operate and maintain a fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to

meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

- 6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2018**. 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.*
- 7. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 7 day of September, 2017.


Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

This Preliminary Determination was prepared by Jessica Joye. If you have any questions about the information in this document, you may reach me at 503-986-0814 or Jessica.L.Joye@oregon.gov

Protests should be addressed to the attention of Water Rights Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>