

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12450, Washington County)	PROPOSING APPROVAL OF A
)	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

JAMES M. AND JUDITH MAR ZALESKI
47655 SW CHANTERELLE DR.
FOREST GROVE, OR 97116

Findings of Fact

1. On July 29, 2016, JAMES M. AND JUDITH MAR ZALESKI, filed an application to change the place of use under an order of satisfactory proof as evidence by Special Order Volume 67 Page 627. The Department assigned the application number T-12450.
2. On August 11, 2015, Certificate 88122 was issued in the name of U.S. BUREAU OF RECLAMATION.
3. Transfer Application T-12450 proposes to transfer a water right within the boundaries of Tualatin Valley Irrigation District (TVID). On April 5, 2016, the Applicant notified the district of the proposed transfer and provided TVID's concurrence with the proposed transfer.
4. Transfer Application T-12450 proposes to transfer a water right served by a Bureau of Reclamation storage project. On August 4, 2016, the Bureau was notified of the proposed transfer and did not provide any comments.
5. Notice of the application for transfer was published on August 9, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On August 22, 2017, the Department contacted the Applicant's agent by phone regarding a deficiency with the application map.

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.

7. On September 29, 2017, the agent for the Applicant submitted an updated map sufficient to satisfy the deficiency.
8. On December 14, 2017, the Department e-mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12450 to the agent for the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 14, 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.
9. The portion of the right to be transferred is as follows:

Certificate: 88122 in the name of the U.S. BUREAU OF RECLAMATION (perfected under Permit S-35792)

Use: IRRIGATION of 10.0 ACRES

Priority Date: FEBRUARY 20, 1963

Rate: 0.12 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated from direct flow and shall be further limited to a diversion of not to exceed 2.5 acre-feet for each acre irrigated during the irrigation season of each year from direct flow and storage from the reservoir constructed under permit R-5777 and as evidenced by certificate 81149; provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein. The right is further limited to the use of stored water on the lands described as supplemental irrigation.

Source: Scoggins Creek, Scoggins Reservoir/Henry Hagg Lake (constructed under Permit R-5777), and Gales Creek, Tributaries to the Tualatin River and the Tualatin River, tributary to the Willamette River.

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	4 W	WM	20	NE NE	700 FEET SOUTH AND 1030 FEET WEST FROM THE NE CORNER OF SECTION 20

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 S	4 W	WM	2	NW SW	38	1.44
1 S	4 W	WM	2	SW SW	38	3.28
1 S	4 W	WM	3	NE SE	38	1.48
1 S	4 W	WM	3	SE SE	38	3.80
Total						10.00

10. Transfer Application T-12450 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 S	4 W	WM	3	SW SE	38	0.29
1 S	4 W	WM	3	SW SE	39	9.71
Total						10.00

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-12450.
- 13. The proposed change as conditioned 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 place of use proposed in Transfer Application T-12450 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-12450 is approved, the final order will include the following:

- 1. *The change in place of use proposed in Transfer Application T-12450 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 88122 and any related decree.*
- 3. *Certificate 88122 is modified. The Department will issue a superseding certificate describing the right when it determines that it is necessary for record keeping.*
- 4. *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 (new and existing)
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
- 5. *The former place of use of the transferred right shall no longer receive water under the right.*

6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2028**. 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.*

Dated at Salem, Oregon this MAR 22 2018



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

This Preliminary Determination was prepared by Arla Heard. If you have questions about the information in the document, you may reach me at 503-986-0806 or arla.l.heard@oregon.gov

Protests should be addressed to the attention of Water Rights Services 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>