



# Oregon

Kate Brown, Governor

**Water Resources Department**  
725 Summer St NE, Suite A  
Salem, OR 97301  
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September 27, 2018

ROBERT J. AND DOROTHY C. SCHUMACHER TRUST  
C/O TOM SCHUMACHER, TRUSTEE  
PO BOX 303  
SUBLIMITY, OR 97385

SUBJECT: Water Right Transfer Application T-12720

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12720. 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 and in the Stayton Mail newspaper, 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 last date of newspaper publication.

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 [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@oregon.gov) or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane  
Transfer Specialist  
Transfer and Conservation Section

cc: T-12720  
Joel M. Plahn, District 16 Watermaster (*via e-mail*)  
Eric Urstadt, Agent for the applicant (*via e-mail*)  
City of Sublimity, Receiving Landowner

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12720, Marion County	)	PROPOSING APPROVAL OF
	)	CHANGES IN POINT OF
	)	APPROPRIATION, PLACE OF USE,
	)	AND 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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicant**

ROBERT J. AND DOROTHY C. SCHUMACHER  
TRUST  
C/O TOM SCHUMACHER, TRUSTEE  
PO BOX 303  
SUBLIMITY, OR 97385

**Receiving Landowner**

CITY OF SUBLIMITY  
245 SILVERTON ROAD  
SUBLIMITY, OR 97305

**Findings of Fact**

1. On July 18, 2017, ROBERT J. AND DOROTHY C. SCHUMACHER TRUST, C/O TOM SCHUMACHER, filed an application to change the point of appropriation, place of use, and character of use under Certificate 47073. The Department assigned the application number T-12720.
2. The City of Sublimity is the receiving landowner who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on August 1, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

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.

4. On June 5, 2018, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of the deficiencies in the application. The Department requested that the deficiencies be resolved by July 5, 2018.
5. On June 12, 2018, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of the deficiencies in the application. The Department requested that the deficiencies be resolved by July 12, 2018.
6. On June 13, 2018, the Department received additional fees in order to continue processing the application.
7. On June 22, 2018, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of the deficiencies in the application. The Department requested that the deficiencies be resolved by July 31, 2018.
8. On June 29, 2018, the applicant submitted an Affidavit for the Partial Cancellation of a Water Right Certificate.
9. On July 2, 2018, the applicant's agent submitted a revised map and Table 2, removing lands to be cancelled from the transfer application.
10. On August 9, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12720 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 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.
11. On September 6, 2018, the Department determined a condition regarding the maximum duty limitation was not included in the Determination and Proposed Action section of the draft Preliminary Determination. Therefore the Department determined a revised draft Preliminary Determination shall be issued to correct the missing condition.
12. On September 7, 2018, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-12720 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of October 8, 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.

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

**Certificate:** 47073 in the name of ROBERT SCHUMACHER (perfected under Permit G-4170)  
**Use:** IRRIGATION OF 37.9 ACRES AND SUPPLEMENTAL IRRIGATION OF 30.7 ACRES  
**Priority Date:** JUNE 3, 1968  
**Rate:** 0.86 CUBIC FOOT 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:** A WELL, a tributary of BEAVER CREEK

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	1 W	WM	35	NW NW	730 FEET SOUTH AND 170 FEET EAST FROM THE NW CORNER OF SECTION 35

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	1 W	WM	26	SW SW	17.1
8 S	1 W	WM	35	NE NW	0.4
8 S	1 W	WM	35	NW NW	20.4
Total					37.9

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	1 W	WM	35	NE NW	2.8
8 S	1 W	WM	35	NW NW	14.5
8 S	1 W	WM	35	SW NW	9.9
8 S	1 W	WM	35	SE NW	3.5
Total					30.7

14. Transfer Application T-12720 proposes to move the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original well location measured in miles (mi.)
8 S	1 W	WM	34	SE SE	SUBLIMITY WELL #1 - 1330 FEET SOUTH AND 1250 FEET WEST FROM THE E1/4 CORNER OF SECTION 34	0.7 mi.
8 S	1 W	WM	34	NE SW	SUBLIMITY WELL #2 - 340 FEET SOUTH AND 3040 FEET WEST FROM THE E1/4 CORNER OF SECTION 34	0.8 mi.
8 S	1 W	WM	34	SE SE	SUBLIMITY WELL #3 - 2000 FEET SOUTH AND 880 FEET WEST FROM THE E1/4 CORNER OF SECTION 34	0.8 mi.
8 S	1 W	WM	35	SW NE	SUBLIMITY WELL #4 - 100 FEET NORTH AND 2920 FEET EAST FROM THE E1/4 CORNER OF SECTION 34	0.6 mi.

15. Transfer Application T-12720 also proposes to change the place of use of the right to:

MUNICIPAL USE
WITHIN THE SERVICE AREA OF THE CITY OF SUBLIMITY

16. Transfer Application T-12720 proposes to change the character of use to Municipal uses.
17. Certificate 47073 does not specify the irrigation season, nor is an irrigation season specified by Basin Program or Decree. Consistent with OAR 690-250-0070(1), the irrigation season is March 1 through October 31.
18. The total volume of water that may be diverted for Municipal uses, as conditioned, is 94.75 Acre-Feet (AF) March 1 through October 31. ( $2.5 \times 37.9 = 94.75$ ).

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

19. 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.
20. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-12720.
21. The proposed changes, as conditioned, would not result in enlargement of the right.
22. The proposed changes would not result in injury to other water rights.
23. All other application requirements are met.

**Determination and Proposed Action**

The change in point of appropriation, change in place of use, and change in character of use proposed in Transfer Application T-12720 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

*If Transfer Application T-12720 is approved, the final order will include the following:*

- 1. The change in point of appropriation, change in place of use, and change in character of use proposed in Transfer Application T-12720 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 47073 and any related decree.*
- 3. Water right Certificate 47073 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 points of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
5. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
6. *The former place of use of the transferred right shall no longer receive water under the right.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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.*
8. *The use of water under the proposed municipal use shall be limited to a rate of diversion of 0.86 cubic foot per second and further limited to a total quantity of water diverted of 94.75 acre-feet during the irrigation season.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this SEP 27 2018.



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

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@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>