

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12966, Jackson County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL 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

JAMIE ERLICHT
10208 BRIARWOOD DR
LOS ANGELES, CA 90077

Findings of Fact

1. On July 6, 2018, Jamie Erlicht filed an application for an additional point of diversion under Certificates 43573 and 43575. The Department assigned the application number T-12966.
2. Notice of the application for transfer was published on July 10, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 15, 2019, the Department contacted Jamie Erlicht by telephone and on January 24, 2019, by written correspondence to notify the applicant of the deficiencies in the application. The Department requested that the deficiencies be resolved by February 15, 2019. On February 12, 2019, the Department received a valid Evidence of Use Affidavit from the applicant, resolving the deficiencies.
4. On March 8, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12966 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 8, 2019, 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.

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

Certificate: 43573 in the name of WAYNE H. AND BERTHA O. SAFLEY (perfected under Permit S-4339)
Use: IRRIGATION of 10.0 ACRES
Priority Date: DECEMBER 15, 1919
Rate: 0.065 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.
Source: ROGUE RIVER, tributary of PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
35 S	1 W	WM	29	SE NW	2	POD 1 - 2300 FEET SOUTH AND 680 FEET WEST OF THE N 1/4 CORNER OF SECTION 29

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	
35 S	1 W	WM	29	NE SW	5.0	

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

Certificate: 43575 in the name of WAYNE H. AND BERTHA O. SAFLEY (perfected under Permit S-15221)
Use: IRRIGATION of 3.0 ACRES
Priority Date: MARCH 24, 1942
Rate: 0.0362 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 4.5 acre-feet per acre for each acre irrigated during the irrigation season. April 2 to October 31
Source: ROGUE RIVER, tributary of PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
35 S	1 W	WM	29	SE NW	2	POD 1 - 2300 FEET SOUTH AND 680 FEET WEST OF THE N 1/4 CORNER OF SECTION 29

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	1 W	WM	29	NE SW	3	3.0

- Transfer Application T-12966 proposes an additional point of diversion approximately 0.2 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	1 W	WM	29	NE SW	POD 2 - 3600 FEET SOUTH AND 632 FEET WEST OF THE N 1/4 CORNER OF SECTION 29

- The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

- 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 rights are subject to forfeiture under ORS 540.610.
- A pump, pipeline, and sprinkler 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-12966.
- The proposed change would not result in enlargement of the rights.
- The proposed change would not result in injury to other water rights.
- All other application requirements are met.

Determination and Proposed Action

The additional point of diversion proposed in Transfer Application T-12966 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.

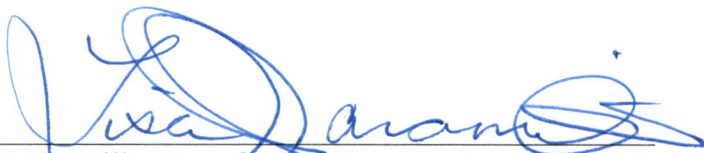
If Transfer Application T-12966 is approved, the final order will include the following:

- The additional point of diversion proposed in Transfer Application T-12966 is approved.*
- 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 43573 and 43575 and any related decree.*
- Water right Certificates 43573 and 43575 are cancelled. A new certificate will be issued describing that portion of the rights not affected by this transfer.*

4. *The quantity of water diverted at the proposed additional point of diversion (POD 2), together with that diverted at the original point of diversion (POD 1), shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *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.*
 - 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.*
6. *Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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.*

8. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Signed at Salem, Oregon this APR 26 2019.



Lisa J. Jaramillo, Transfer and Conservation Section Manager for
THOMAS M. BYLER, DIRECTOR
Oregon Department of Water Resources

This Preliminary Determination was prepared by: Tamera Smith. If you have any questions about the information in this document, you may reach me at 503-986-0864 or tamera.l.smith@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>



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

April 26, 2019

VIA E-MAIL

JAMIE ERLICHT
10208 BRIARWOOD DR
LOS ANGELES, CA 90077

SUBJECT: Water Right Transfer Application T-12966

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12966. 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 503-986-0864 or tamera.l.smith@oregon.gov if I may be of assistance.

Kindest regards,

Tamera Smith
Transfer Specialist
Transfer and Conservation Section

cc: T-12966
Shavon L. Haynes, District 13 Watermaster (*via e-mail*)
Evan Malepsy, Agent for the applicant (*via e-mail*)

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