



Oregon
Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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September 10, 2019

JER-ANN LLC
c/o TONY SMITH
19101 RIVER RD NE
ST PAUL, OR 97137

SUBJECT: Water Right Transfer Application T-12983

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12983. 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 503-986-0806 or arla.l.davis@oregon.gov if I may be of assistance.

Sincerely,

Transfer Specialist
Transfer and Conservation Section

cc: T-12983
Joel M. Plahn, District 16 Watermaster *(via e-mail)*
Doann Hamilton, Agent for the applicant *(via e-mail)*

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-12983, Marion, Yamhill 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

JER-ANN LLC
c/o: TONY SMITH
19101 RIVER RD NE
ST PAUL, OR 97137

Findings of Fact

1. On July 23, 2018, JER-ANN LLC, c/o TONY SMITH filed an application to change the place of use under Certificate 36332. The Department assigned the application number T-12983.
2. Notice of the application for transfer was published on July 31, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 5, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12983 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 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.
4. The right to be transferred is as follows:
Certificate: 36332 in the name of JEROME J. SMITH (perfected under Permit S-32325)
Use: IRRIGATION of 236.4 ACRES
Priority Date: JANUARY 31, 1967
Rate: 1.61 CUBIC FEET PER SECOND

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.

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: WILLAMETTE RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 S	3 W	WM	26	SW NE	7	1210 FEET SOUTH AND 1600 FEET EAST FROM THE NE CORNER OF LOT 11 IN SECTION 26

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
4 S	3 W	WM	25	SW NE		66	27.5
4 S	3 W	WM	25	SE NE		66	18.1
4 S	3 W	WM	25	NE NW	2		3.2
4 S	3 W	WM	25	NW NW	1		29.8
4 S	3 W	WM	25	SW NW			37.2
4 S	3 W	WM	25	SE NW	3		0.6
4 S	3 W	WM	25	SE NW		66	24.0
4 S	3 W	WM	25	NE SW		66	6.8
4 S	3 W	WM	25	NW SW	5		6.2
4 S	3 W	WM	25	NE SE		66	6.3
4 S	3 W	WM	25	NW SE		66	8.5
4 S	3 W	WM	26	NE NE	11		30.0
4 S	3 W	WM	26	SE NE	7		31.0
4 S	3 W	WM	26	NE SE	6		7.2
						Total	236.4

5. Transfer Application T-12983 proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
4 S	3 W	WM	25	SW NE		66	27.5
4 S	3 W	WM	25	SE NE		66	11.6
4 S	3 W	WM	25	NE NW	2		3.2
4 S	3 W	WM	25	NW NW	1		29.8
4 S	3 W	WM	25	SW NW			37.2
4 S	3 W	WM	25	SE NW	3		0.6
4 S	3 W	WM	25	SE NW		66	24.0
4 S	3 W	WM	25	NE SW		66	6.8
4 S	3 W	WM	25	NW SW	5		6.2
4 S	3 W	WM	25	NE SE		66	3.8
4 S	3 W	WM	25	NW SE		66	8.5
4 S	3 W	WM	26	NE NE	11		30.0
4 S	3 W	WM	26	SE NE	7		40.0
4 S	3 W	WM	26	NE SE	6		7.2
						Total	236.4

6. The Department received information from the Certified Water Right Examiner indicating a scrivener's error in the authorized point of diversion location information described in Certificate 36332. The accurate location of the authorized point of diversion is as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 S	3 W	WM	26	SW NE	7	1210 FEET SOUTH AND 1600 FEET WEST FROM THE NE CORNER OF LOT 11 IN SECTION 26

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

7. 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.
8. 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-12983.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.
11. All other application requirements are met.

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-12983 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-12983 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-12983 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 36332 and any related decree.*
3. *Water right Certificate 36332 is cancelled.*
4. *The former place of use of the transferred right shall no longer receive water under the right.*
5. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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.*

6. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

SEP 10 2019

Dated at Salem, Oregon this _____



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Thomas M. Byler, Director
Oregon Water Resources Department

This Preliminary Determination was prepared by Arla Davis. If you have questions about the information in this document, you may reach me at 503-986-0806 or arla.l.davis@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>