



**Oregon**  
Kate Brown, Governor

**Water Resources Department**  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
Fax (503) 986-0904

September 19, 2019

MARGARET AND THOMAS BARNETT  
12814 ARNDT RD NE  
AURORA, OR 97002

SUBJECT: Water Right Transfer Application T-12944

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12944. 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 Woodburn Independent 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-12944  
Joel M. Plahn, District 16 Watermaster (*via e-mail*)  
Jeanne Boatwright, Agent for the applicant (*via e-mail*)

encs

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12944, Marion County	)	PROPOSING APPROVAL OF AN
	)	ADDITIONAL POINT OF
	)	APPROPRIATION AND A CHANGE IN
	)	PLACE 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.

**Applicant**

MARGARET AND THOMAS BARNETT  
12814 ARNDT RD NE  
AURORA, OR 97002

**Receiving Landowner**

MARGARET AND THOMAS BARNETT  
12814 ARNDT RD NE  
AURORA, OR 97002

**Findings of Fact**

1. On June 8, 2018, MARGARET AND THOMAS BARNETT filed an application for an additional point of appropriation and to change the place of use under Certificate 36301. The Department assigned the application number T-12944.
2. Margaret and Thomas Barnett are the receiving landowners who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on June 19, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On June 28, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12944 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of July 29, 2019, 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.

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 portion of the right to be transferred is as follows:

**Certificate:** 36301 in the name of GLEN YERGEN (perfected under Permit G-2669)  
**Use:** IRRIGATION of 1.0 ACRE  
**Priority Date:** JUNE 5, 1964  
**Rate:** 0.01 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:** ONE WELL, a tributary of MILL CREEK (PUDDING RIVER)

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 W	WM	4	NE NE	WELL 1 - 100 FEET SOUTH AND 440 FEET WEST FROM THE NE CORNER OF SECTION 4

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 W	WM	4	NE NE	1.0

6. Transfer Application T-12944 proposes an additional point of appropriation approximately 0.5 mile East from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 W	WM	3	NE NW	WELL 2 - 495 FEET SOUTH AND 1930 FEET EAST FROM THE NE CORNER OF SECTION 4

7. Transfer Application T-12944 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 W	WM	3	NE NW	1.0

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

8. 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.
9. 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-12944.
10. The proposed changes would not result in enlargement of the right.
11. The proposed changes would not result in injury to other water rights.

**STATE OF OREGON  
WATER RESOURCES DEPARTMENT**

725 Summer St. N.E. Ste. A

SALEM, OR 97301-4172

(503) 986-0900 / (503) 986-0904 (fax)

RECEIPT # **130812**

INVOICE # \_\_\_\_\_

RECEIVED FROM: Barnett Farms +  
BY: NURSERY, LLC

APPLICATION	
PERMIT	
TRANSFER	T-12944

CASH:  CHECK:#  12304 OTHER: (IDENTIFY)

TOTAL REC'D \$ 69.12

**1083 TREASURY 4170 WRD MISC CASH ACCT**

0407 COPIES	<u>46117</u>	\$
<u>0207</u> OTHER:	(IDENTIFY) <u>Newspaper Notice</u>	\$ <u>69.12</u>

0243 I/S Lease \_\_\_\_\_ 0244 Muni Water Mgmt. Plan \_\_\_\_\_ 0245 Cons. Water \_\_\_\_\_

**4270 WRD OPERATING ACCT**

**MISCELLANEOUS**

0407 COPY & TAPE FEES	\$
0410 RESEARCH FEES	\$
0408 MISC REVENUE: (IDENTIFY)	\$
TC162 DEPOSIT LIAB	\$
0240 EXTENSION	\$

**WATER RIGHTS.**

0201 SURFACE WATER	0202	\$
0203 GROUND WATER	0204	\$
0205 TRANSFER		

**WELL CONSTRUCTION**

0218 WELL DRILL CONSTRUCTOR	EXAM FEE	\$	0219	LICENSE FEE	\$
LANDOWNER'S PERMIT			0220		\$
OTHER (IDENTIFY)					

Send to applicant w/ PD

**0536 TREASURY 0437 WELL CONST. START FEE**

0211 WELL CONST START FEE	\$	CARD #	
0210 MONITORING WELLS	\$	CARD #	
OTHER (IDENTIFY)			

**0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER**

0233 POWER LICENSE FEE (FW/WRD)		\$
0231 HYDRO LICENSE FEE (FW/WRD)		\$
HYDRO APPLICATION		\$

**TREASURY OTHER / RDX**

FUND \_\_\_\_\_ TITLE \_\_\_\_\_  
OBJ. CODE \_\_\_\_\_ VENDOR # \_\_\_\_\_  
DESCRIPTION \_\_\_\_\_ \$ \_\_\_\_\_

RECEIPT: **130812**

DATED: 9/13/19

BY: Amasha Phillips

**Notice of Preliminary Determination for  
Water Right Transfer T-12944**

T-12944 filed by Margaret and Thomas Barnett, 12814 Arndt RD NE, Aurora, OR, 97002, proposes an additional point of appropriation and a change in place of use under Certificate 36301. The right allows the use of 0.01 cubic foot per second from one well in Sec. 4, T4S, R1W, WM for irrigation in Sec. 4. The applicant proposes an additional point of appropriation in Sec. 3, T4S, R1W, WM and to change the place of use to Sec. 3, T4S, R1W, WM. The Water Resources Department proposes to approve the transfer, based on the requirements of ORS Chapter 540 and OAR 690-380-5000.

Any person may file, jointly or severally, a protest or standing statement within 30 days after the last date of newspaper publication of this notice, MM/DD/YEAR. Call (503) 986-0815 to obtain additional information. If no protests are filed, the Department will issue a final order consistent with the preliminary determination.

12. All other application requirements are met.

### **Determination and Proposed Action**

The additional point of appropriation and change in place of use proposed in Transfer Application T-12944 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-12944 is approved, the final order will include the following:*

- 1. The additional point of appropriation and change in place of use proposed in Transfer Application T-12944 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 36301 and any related decree.*
- 3. Water right Certificate 36301 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 additional point of appropriation (Well 2), together with that diverted at the original point of appropriation (Well 1), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 1).*
- 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, 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 changes and full beneficial use of the water.*

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

Dated in Salem, Oregon on SEP 19 2019



Lisa J. Jaramillo, Transfer and Conservation Section Manager, 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 Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.*

**Notice Regarding Service Members:** Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.