



Oregon

Kate Brown, Governor

Water Resources Department
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October 1st, 2019

BROOKS FARM LLC
ATTN: ELIZABETH BROOKS
26845 MCFARLAND ROAD
MONROE, OR 97456

SUBJECT: Water Right Transfer Application T-13183

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to deny application T-13183. This document is an intermediate step in the denial process; water may not be used legally as proposed in the transfer application until a Final Order to approve the transfer 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 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-13183
Joel Plahn, District 16 Watermaster (*via e-mail*)
Steve Bruce, 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-13183, Benton County |) | PROPOSING DENIAL OF A CHANGE |
| |) | IN POINTS OF DIVERSION AND |
| |) | PLACES 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

BROOKS FARM LLC
ATTN: ELIZABETH BROOKS
26845 MCFARLAND ROAD
MONROE, OR 97456

Findings of Fact

1. On May 14, 2019, BROOKS FARM LLC; ATTN: ELIZABETH BROOKS filed an application to change the points of diversion under Certificate 41818, 61427, and 61593, and to change the places of use under Certificates 41818, 52333, 61427, and 61593. The Department assigned the application number T-13183.
2. Notice of the application for transfer was published on May 28, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 19, 2019, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of a deficiency in the application. The Department requested that the deficiency be resolved by July 18, 2019. The Department determined a portion of the lands being transferred are located within the boundaries of the Greenberry Irrigation District.
4. On August 22, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13183 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 23, 2019, for the applicant to respond.

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.

5. On August 22, 2019, the applicant's agent requested to extend to complete full beneficial use of the water to October 1, 2022.
6. On September 4, 2019, the applicant submitted a report of ownership for Section 18, T12S, R5W, WM, tax lot 1300 only.
7. On September 5, 2019, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent, that reports of ownership for tax lot 700 located in Section 17, T12S, R5W, WM, and tax lot 200 located in Section 20, T12S, R5W, WM, need to be submitted according to the guidelines as required by the cover letter sent to the applicant on August 22, 2019. The Department has not received a response.
8. The portion of the first right to be transferred is as follows:

Certificate: 41818 in the name of C. W. MANN (perfected under Permit S-33269)
Use: IRRIGATION of 0.7 ACRE
Priority Date: FEBRUARY 14, 1968
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 a diversion of 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: MARYS RIVER, tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|------|-----|-----|-----|-------|-----|--|
| 12 S | 5 W | WM | 18 | NE SE | 53 | POD 1 - 2470 FEET SOUTH AND 90 FEET EAST FROM THE NE CORNER OF LIGGETTS DLC 52 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 12 S | 5 W | WM | 17 | SW NW | 53 | 0.7 |

9. Transfer Application T-13183 proposes to move the authorized point of diversion approximately 1.2 miles downstream to:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|------|-----|-----|-----|-------|-----|---|
| 12 S | 5 W | WM | 20 | NE NE | 54 | POD 2 - 30 FEET NORTH AND 1220 FEET WEST FROM THE NE CORNER OF SECTION 20 |

10. Transfer Application T-13183 also proposes to change the place of use of the right to:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 12 S | 5 W | WM | 17 | SW SW | 54 | 0.7 |

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

Certificate: 52333 in the name of CROCKER FARMS (perfected under Permit S-39279)
Use: IRRIGATION of 9.8 ACRES
Priority Date: JULY 8, 1974
Rate: 0.12 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 a diversion of 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: MARYS RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|------|-----|-----|-----|-------|-----|---|
| 12 S | 5 W | WM | 20 | SE SE | 54 | POD 2 - 30 FEET NORTH AND 1220 FEET WEST FROM THE SE CORNER OF SECTION 17 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 12 S | 5 W | WM | 20 | NE NW | 54 | 9.8 |

12. Transfer Application T-13183 proposes to change the place of use of the right to:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 12 S | 5 W | WM | 18 | NE SE | 52 | 3.7 |
| 12 S | 5 W | WM | 18 | NE SE | 54 | 0.8 |
| 12 S | 5 W | WM | 18 | SE SE | 52 | 5.3 |
| Total | | | | | | 9.8 |

13. The third right to be transferred is as follows:

Certificate: 61427 in the name of JAMES L FESSLER (perfected under Permit S-40111)
Use: IRRIGATION of 51.2 ACRES
Priority Date: SEPTEMBER 4, 1975
Rate: 0.64 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: MARYS RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|------|-----|-----|-----|-------|-----|--|
| 12 S | 5 W | WM | 18 | SW NE | 52 | ORIGINAL POD - 1250 FEET SOUTH AND 1500 FEET WEST FROM THE NE CORNER OF DLC 52 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 12 S | 5 W | WM | 18 | SW NE | 52 | 4.2 |
| 12 S | 5 W | WM | 18 | SE NW | 52 | 3.2 |
| 12 S | 5 W | WM | 18 | NE SW | 52 | 9.0 |
| 12 S | 5 W | WM | 18 | SE SW | 52 | 2.1 |
| 12 S | 5 W | WM | 18 | NW SE | 52 | 23.0 |
| 12 S | 5 W | WM | 18 | SW SE | 52 | 9.7 |
| Total | | | | | | 51.2 |

14. Transfer Application T-13183 proposes to move the authorized point of diversion approximately 1.6 miles downstream to:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|------|-----|-----|-----|-------|-----|---|
| 12 S | 5 W | WM | 20 | NE NE | 54 | POD 2 - 30 FEET NORTH AND 1220 FEET WEST FROM THE NE CORNER OF SECTION 20 |

15. Transfer Application T-13183 also proposes to change the place of use of the right to:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 12 S | 5 W | WM | 17 | NE SW | 53 | 0.6 |
| 12 S | 5 W | WM | 17 | NE SW | 54 | 3.6 |
| 12 S | 5 W | WM | 17 | NW SW | 54 | 0.4 |
| 12 S | 5 W | WM | 17 | SW SW | 54 | 26.1 |
| 12 S | 5 W | WM | 17 | SE SW | 54 | 19.9 |
| 12 S | 5 W | WM | 20 | NE NW | 54 | 0.6 |
| Total | | | | | | 51.2 |

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

Certificate: 61593 in the name of CROCKER FARMS (perfected under Permit S-44194)

Use: IRRIGATION of 4.0 ACRES

Priority Date: APRIL 16, 1979

Rate: 0.05 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: MARYS RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|------|-----|-----|-----|-------|-----|---|
| 12 S | 5 W | WM | 18 | NE SE | 53 | POD 1 - 2470 FEET SOUTH AND 90 FEET EAST FROM THE NE CORNER OF DLC 52 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 12 S | 5 W | WM | 17 | SW NW | 53 | 1.7 |
| 12 S | 5 W | WM | 18 | SE NE | 53 | 2.3 |
| Total | | | | | | 4.0 |

17. Transfer Application T-13183 proposes to move the authorized point of diversion approximately 1.2 miles downstream to:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|------|-----|-----|-----|-------|-----|---|
| 12 S | 5 W | WM | 20 | NE NE | 54 | POD 2 - 30 FEET NORTH AND 1220 FEET WEST FROM THE NE CORNER OF SECTION 20 |

18. Transfer Application T-13183 also proposes to change the place of use of the right to:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 12 S | 5 W | WM | 17 | SW SW | 54 | 1.6 |
| 12 S | 5 W | WM | 18 | SE SE | 54 | 2.4 |
| Total | | | | | | 4.0 |

19. 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)]

20. 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.
21. 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-13183.
22. The proposed changes would not result in enlargement of the rights.
23. The proposed changes would not result in injury to other water rights.
24. Reports of ownership for tax lot 700 located in Section 17, T12S, R5W, WM, and tax lot 200 located in Section 20, T12S, R5W, WM, have not been submitted. Pursuant to OAR

690-380-4010(5); For permanent transfers under OAR 690-380-2000, upon receipt of the draft preliminary determination, an applicant other than an entity that meets the criteria described in OAR 690-380-3000(13)(b) or (c) shall submit a report of ownership information as defined in OAR 690-380-0100(10) for the land to which the water right is appurtenant.

Determination and Proposed Action


The change in points of diversion and change in places of use proposed in Transfer Application T-13183 appear to be **NOT** consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. Reports of ownership for the land to which the water right is appurtenant have not been submitted. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If the deficiency is resolved, and Transfer Application T-13183 is approved, the final order will include the following:

- 1. The change in points of diversion and change in places of use proposed in Transfer Application T-13183 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 Certificates 41818, 52333, 61427, and 61593 and any related decree.*
- 3. Water right Certificate 61427 is cancelled.*
- 4. Water right Certificates 41818, 52333, and 61593 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.*
- 5. The quantity of water diverted at the new point of diversion (POD 2), shall not exceed the quantity of water lawfully available at the original points of diversion (POD 1 and Original POD).*
- 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. The former place of use of the transferred rights shall no longer receive water under the rights.*

8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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.*
9. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on

 **OCT 01 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

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.