

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13028, Baker 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

CURTIS MARTIN
PO BOX 194
NORTH POWDER, OR 97867
curtismartin026@gmail.com

Findings of Fact

1. On September 17, 2018, CURTIS MARTIN filed an application for an additional point of diversion under Certificates 53672, 53722, and 54110. The Department assigned the application number T-13028.
2. Notice of the application for transfer was published on September 25, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 14, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13028 to the applicant. 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. On January 23, 2019, the applicant requested to extend the date to complete beneficial use of the water to October 1, 2024.

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. The first right to be transferred is as follows:

Certificate: 53672 in the name of LOUISE KOESTER (confirmed by Powder River Decree)
Use: IRRIGATION of 161.3 ACRES
Priority Date: 1886 for 72.0 acres in TRACT NO. 1 and 1907 for 89.3 acres in TRACT NO. 2
Rate: The amount of water to which such right is entitled for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed one-fortieth of one cubic foot per second per acre.
Source: POWDER RIVER, a tributary of SNAKE RIVER

Authorized Place of Use:

IRRIGATION - TRACT NO. 1 (1886)					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	39 E	WM	25	NW NE	10.0
6 S	39 E	WM	25	SW NE	32.0
6 S	39 E	WM	25	NW SE	22.5
6 S	39 E	WM	25	SW SE	7.5
Total					72.0

IRRIGATION - TRACT NO. 2 (1907)					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	39 E	WM	25	SW NE	2.3
6 S	39 E	WM	25	NW SW	3.0
6 S	39 E	WM	25	SW SW	14.0
6 S	39 E	WM	25	SE SW	40.0
6 S	39 E	WM	25	SW SE	30.0
Total					89.3

6. Certificate 53672 does not describe the location of the point of diversion, however information is available from the Powder River Decree indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Ditch
7 S	39 E	WM	1	SW NW	TRAVILLION KOESTER DITCH

7. Transfer Application T-13028 proposes an additional point of diversion approximately 2.0 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	39 E	WM	25	NE SW	MARTIN POD - 20 FEET SOUTH AND 1028 FEET WEST FROM THE CENTER 1/4 CORNER OF SECTION 25

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

Certificate: 53722 in the name of MARVIN D. AND MARY L. CROPP (perfected under Permit S-42792)
Use: IRRIGATION of 34.0 ACRES
Priority Date: MAY 20, 1977
Rate: 0.85 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-FORTIETH 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 3.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: POWDER RIVER, tributary to the SNAKE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	39 E	WM	1	SW NW	30 FEET NORTH AND 1510 FEET WEST FROM THE CENTER 1/4 CORNER OF SECTION 1

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	39 E	WM	25	NE SW	30.0
6 S	39 E	WM	25	NW SE	4.0
Total					34.0

9. Transfer Application T-13028 proposes an additional point of diversion approximately 2.0 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	39 E	WM	25	NE SW	MARTIN POD - 20 FEET SOUTH AND 1028 FEET WEST FROM THE CENTER 1/4 CORNER OF SECTION 25

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

Certificate: 54110 in the name of MARVIN D. AND MARY L. CROPP (confirmed by Powder River Decree)
Use: IRRIGATION of 37.7 ACRES
Priority Date: 1886
Rate: The amount of water to which such right is entitled for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/40 of one cubic foot per second per acre.
Source: POWDER RIVER, a tributary of SNAKE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	39 E	WM	1	SW NW	TRAVILLION KOESTER DITCH - 30 FEET NORTH AND 1510 FEET WEST FROM THE CENTER 1/4 CORNER OF SECTION 1

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	39 E	WM	25	NE NE	0.3
6 S	39 E	WM	25	NW NE	1.6
6 S	39 E	WM	25	SW NE	5.0
6 S	39 E	WM	25	SE NE	13.6
6 S	39 E	WM	25	NE SE	1.4
6 S	39 E	WM	25	NW SE	13.3
6 S	39 E	WM	25	SW SE	2.5
Total					37.7

11. Transfer Application T-13028 proposes an additional point of diversion approximately 2.0 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	39 E	WM	25	NE SW	MARTIN POD - 20 FEET SOUTH AND 1028 FEET WEST FROM THE CENTER 1/4 CORNER OF SECTION 25

12. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

13. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
14. A diversion structure and ditch 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-13028.
15. The proposed change would not result in enlargement of the rights.
16. The proposed change would not result in injury to other water rights.
17. All other application requirements are met.

Determination and Proposed Action

The additional point of diversion proposed in Transfer Application T-13028 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.

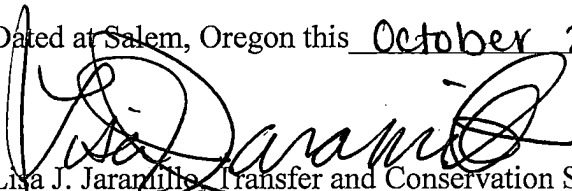
If Transfer Application T-13028 is approved, the final order will include the following:

1. *The additional point of diversion proposed in Transfer Application T-13028 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 53672, 53722, 54110 and any related decree.*
3. *Water right Certificates 53672, 53722, and 54110 are cancelled.*
4. *The quantity of water diverted at the additional point of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *Prior to diverting water, the water user shall install a headgate or other controlling works for the pump to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.*
6. *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 new point of diversion.*
 - b. *The water user shall maintain the meter or measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring device(s); provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
7. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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.*
9. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this October 23, 2019


Lisa J. Jaramilla, 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 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

October 23, 2019

CURTIS MARTIN
PO BOX 194
NORTH POWDER, OR 97867

SUBJECT: Water Right Transfer Application T-13028

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13028. 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 Baker City Herald 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 or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-13028
Marcy J. Osborn, District 8 Watermaster (*via e-mail*)

encs