

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

In the Matter of Transfer Application)
T-12889, Harney County)
)
)
)
)
)

PRELIMINARY DETERMINATION
PROPOSING APPROVAL FOR AN
ADDITIONAL POINT OF
APPROPRIATION, A CHANGE IN
PLACES OF USE, AND A CHANGE IN
POINT OF APPROPRIATION

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

SHAWN & KARENA STALCUP
PO BOX 696
BURNS, OR 97720

Findings of Fact

1. On April 5, 2018, SHAWN & KARENA STALCUP filed an application for an additional point of appropriation and to change the place of use under Certificate 93830, and to change the point of appropriation and place of use under Certificate 92371. The Department assigned the application number T-12889.
2. Notice of the application for transfer was published on April 10, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 9, 2019, the agent for the applicant submitted revised application pages. On September 9, 2019, the agent for the applicant submitted revised application pages and a map clarifying the authorized “FROM” lands under Certificate 93830.
4. On September 20, 2019, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12889 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 20, 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. The agent for the applicant also requested that

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.
--

the proposed date for complete application of water be extended to allow additional time to guarantee adequate time to complete the project. The Department approved and extended the date by which the applicant must make full beneficial use of water under the terms and conditions of this transfer to October 1, 2026.

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

Certificate: 92371 in the name of HEATH STALCUP (perfected under Permit G-15949)
Use: IRRIGATION of 24.3 ACRES
Priority Date: NOVEMBER 5, 2004
Rate: 0.30 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.
Period of Use: MARCH 1 THROUGH OCTOBER 31
Source: WELL 1 in HOT SPRINGS SLOUGH BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
24 S	33 E	WM	24	SE NW	WELL 1 - 1310 FEET NORTH AND 1230 FEET WEST FROM THE C ¹ / ₄ CORNER OF SECTION 24

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
24 S	33 E	WM	24	NE NW	8.1
24 S	33 E	WM	24	NW NW	6.4
24 S	33 E	WM	24	SW NW	5.1
24 S	33 E	WM	24	SE NW	4.7
Total:					24.3

6. Transfer Application T-12889 proposes to move the authorized point of appropriation northeast approximately 13.0 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
24 S	32 E	WM	12	NW NW	WELL 3 - 490 FEET SOUTH AND 1030 FEET EAST FROM THE NW CORNER OF SECTION 12

7. Transfer Application T-12889 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
24 S	32 E	WM	11	NE NE	12.5
24 S	32 E	WM	12	NW NW	11.8
Total:					24.3

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

Certificate: 93830 in the name of GARY COX, CONNIE COX, and THOMAS A. FRISBIE SR. TRUST (perfected under Permit G-11785).
Use: IRRIGATION of 59.4 ACRES
Priority Date: APRIL 1, 1991
Rate: 0.38 CUBIC FOOT PER SECOND (CFS); being 0.17 CFS from WELL 1 (Coleman and Frisbie), and 0.21 CFS from WELL 2 (Cox)
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Period of Use: MARCH 1 through OCTOBER 31
Source: WELL 1 and WELL 2, in the SILVIES RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
24 S	32 E	WM	11	SW NE	WELL 1 (Coleman and Frisbie) - 3218 FEET NORTH AND 1381 FEET WEST FROM SE CORNER OF SECTION 11
24 S	32 E	WM	11	SW SE	WELL 2 (Cox) - 1301 FEET NORTH AND 1329 FEET WEST FROM THE SE CORNER OF SECTION 11

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
24 S	32 E	WM	11	NE NE	20.2
24 S	32 E	WM	11	SE NE	39.2
Total:					59.4

9. Transfer Application T-12889 proposes an additional point of appropriation northeast approximately 2730 feet from WELL 1 and 4150 feet from WELL 2 to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
24 S	32 E	WM	12	NW NW	WELL 3 - 490 FEET SOUTH AND 1030 FEET EAST FROM THE NW CORNER OF SECTION 12

10. Transfer Application T-12889 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
24 S	32 E	WM	11	NE NE	27.5
24 S	32 E	WM	11	SE NE	4.2
24 S	32 E	WM	12	NW NW	27.7
Total:					59.4

Transfer Review Criteria (OAR 690-380-4010)

11. 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.
12. Wells, pumps, pipeline, and sprinkler systems 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-12889.
13. The proposed changes would not result in enlargement of the rights.
14. The proposed change would not result in injury to other water rights.
15. All other application requirements are met.

Determination and Proposed Action

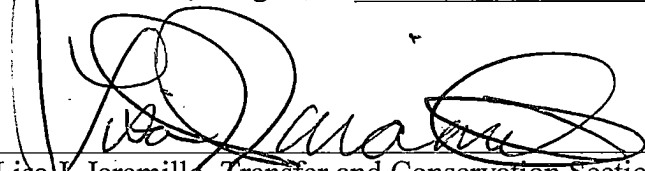
The additional point of appropriation, change in places of use, and point of appropriation proposed in Transfer Application T-12889 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12889 is approved, the final order will include the following:

1. *The additional point of appropriation, change in places of use, and point of appropriation proposed in Transfer Application T-12889 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 92371 and 93830 and any related decree.*
3. *Water right Certificates 92371 and 93830 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
4. *The quantity of water, described by the water right under Certificate 92371, diverted at the new point of appropriation (Well 3), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 1).*
5. *The quantity of water, described by the water right under Certificate 93830, diverted at the new additional point of appropriation (Well 3), together with that diverted at the original points of appropriation (Well 1 – Coleman and Frisbee, and Well 2 – Cox) shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 1 – Coleman and Frisbee, and Well 2 – Cox).*

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 point of appropriation (new and existing).*
 - 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.*
7. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
8. *The former places of use of the transferred rights shall no longer receive water under the rights.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2026**. 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.*
10. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this NOV 25 2019



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

This Preliminary Determination was prepared by Ken Dowden. T-12889 is now assigned to 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

November 25, 2019

SHAWN & KARENA STALCUP
PO BOX 696
BURNS, OR 97720

SUBJECT: Water Right Transfer Application T-12889

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12889. 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 Burns Times 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-12889
J R. Johnson, District 10 Watermaster (via e-mail)
John A. Short, Agent for the applicant (via e-mail)

encs