

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

In the Matter of Instream Transfer	)	PRELIMINARY DETERMINATION
Application T-13129, Union County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN PLACE OF USE AND
	)	CHARACTER OF USE AND
	)	CANCELLATION OF A WATER
	)	RIGHT

**Authority**

Oregon Revised Statute (ORS) 540.505 to 540.580 establishes 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 Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled

**Applicant**

MICHAEL BECKER  
PO BOX 1159  
LA GRANDE, OR 97850

**Findings of Fact**

1. On February 21, 2019, Michael Becker filed an application to change the place of use and character of use under Certificate 90393 to instream use. The Department assigned the application number T-13129.
2. Notice of the application for transfer was published on February 26, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. Consistent with land use requirements, prior to submitting the instream transfer application, the applicant provided notification of the intent to file the instream transfer application to Union County. Additionally, the Department provided notice of the proposed action to Union County Planning Department upon receipt of Transfer Application T-13129.
4. During the review process the Department determined that water right Certificate 90393 and Certificate 94486 are appurtenant to the lands. To prevent enlargement of the water right and

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.

continue the processing of the instream transfer application, water right Certificate 94486 would need to be cancelled.

5. On December 23, 2019, Schwabe Williamson & Wyatt on behalf of Michael Becker provided an affidavit of cancellation for the water right Certificate 94486.
6. On December 9, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13129 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 8, 2020, 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.
7. The right to be transferred is as follows:

**Certificate:** 90393 in the name of R D MAC INC. (confirmed by decree of the Circuit Court of the State of Oregon for Union County recorded at Salem, in the Order Record of the Water Resources Director in Volume 8, at Page 1)

**Use:** IRRIGATION of 112.0 ACRES

**Priority Date:** 1869

**Rate:** 2.8 CUBIC FEET 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, is 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** GRANDE RONDE RIVER, tributary of SNAKE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	38 E	WM	32	SW SE	640 FEET NORTH AND 190 FEET EAST FROM THE S1/4 CORNER OF SECTION 32

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	38 E	WM	15	NW NE	38.2
3 S	38 E	WM	15	SW NE	34.5
3 S	38 E	WM	15	NE SE	25.0
3 S	38 E	WM	15	NW SE	14.3

The quantity of water diverted at the authorized point of diversion, shall not exceed the quantity of water lawfully available from the original point of diversion described as follows: **Original Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	38 E	WM	31	SW SW	400 FEET NORTH AND 200 FEET EAST FROM THE SW CORNER OF SECTION 31

8. A total of 336.0 acre-feet of water may be beneficially used annually under the existing right.
9. Transfer Application T-13129 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values; and recreation.
10. Transfer Application T-13129 proposes to change the place of use of the right to an instream point located 640 feet North and 190 feet East from the S1/4 corner of Section 32, Township 2 South, Range 38 East, W.M.

11. The application proposed the quantities of water to be transferred instream be as protected follows:

Proposed Instream Period	Instream Rate (cfs)
Unspecified on application	2.8

***Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)***

12. Water Right Certificate 90393 was issued on June 12, 2015, being within the five years of submittal of the water right instream transfer application.
13. Certificate 90393 does not specify the irrigation season. In addition, the Grande Ronde River Decree and the Basin Program do not specify a season of use for irrigation. Therefore, use is allowed anytime water can be used beneficially, and does not exceed the annual duty. For purposes of this instream transfer, an irrigation season of March 1 through November 30 shall be used to help establish when water may be protected instream.
14. Based upon review of the instream transfer, the quantities to be transferred and protected instream, have been modified as follows:

Instream Point: At the authorized POD (as described in Finding of Fact No. 7)

Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Instream Period
1869	0.616	336.0	March 1 through November 30

15. The proposed change would result in enlargement of the right. The lands currently irrigated under the right would continue to receive water from the same source resulting in enlargement of the right. To prevent enlargement water right Certificate 94486 will be cancelled.

16. The proposed change would not result in injury to other water rights.
17. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
18. The protection of flows at the authorized point of diversion is appropriate, considering:
  - a) The instream water right begins at the recorded point of diversion;
  - b) The location of confluences with other streams downstream of the point of diversion;
  - c) There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - d) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the point of the instream water right.
19. Any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to ORS 537.341 or ORS 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or ORS 537.470, unless otherwise specified in an order approving a new instream water right under these statutes.
20. The total monthly quantities of water to be protected under the existing and proposed instream rights at the point will provide for a beneficial purpose and do not exceed the estimated average natural flow.

### **Cancellation of a Water Right**

21. On December 23, 2019, an affidavit certifying that an entire water right has been abandoned and requesting cancellation of the right was received from Schwabe Williamson & Wyatt on behalf of Michael Becker.
22. The right to be cancelled is as follows:

**Certificate:** 94486 in the name of E.E. GROUT (confirmed by decree of the Circuit Court of the State of Oregon for Union County recorded at Salem, in the Order Record of the Water Resources Director in Volume 8, at Page 1)

**Use:** IRRIGATION of 112.0 ACRES

**Priority Date:** 1869

**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 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** MILL CREEK, tributary to SNAKE RIVER

**Authorized Point of Diversion:** None described on certificate

**Authorized Place of Use to be Cancelled:**

Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	38 E	WM	15	NW NE	38.2
3 S	38 E	WM	15	SW NE	34.5
3 S	38 E	WM	15	NE SE	25.0
3 S	38 E	WM	15	NW SE	14.3

**Determination and Proposed Action**

The changes in character of use and place of use to instream use proposed in application T-13129 appear to be consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved, and the abandoned right will be cancelled.

*If Transfer Application T-13129 is approved, the final order will include the following:*

- 1. The changes in character of use and place of use to instream use proposed in application T-13129 are approved. The right that has been abandoned is cancelled.*
- 2. Water right certificate 90393 is cancelled. A new certificate confirming the instream water right shall be issued.*
- 3. Water right certificate 94486 is cancelled.*
- 4. The instream water right shall provide for a point located at 640 feet North and 190 feet East from the S1/4 corner of Section 32, T2S, R38E, W.M.*
- 5. The quantity of water to be protected under the instream water right is:*

<i>Instream Period</i>	<i>Instream Rate (cfs)</i>
<i>March 1 through November 30</i>	<i>0.616</i>

- 6. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion.*
- 7. The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.*
- 8. 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 90393 and any related decree.*

9. *The former place of use of the transferred water shall no longer receive water as part of this right.*

Dated at Salem, Oregon this day JAN 13 2020.



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

This Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-986-0884 or [Sarah.A.Henderson@oregon.gov](mailto:Sarah.A.Henderson@oregon.gov).

*Protests should be addressed to the attention of Water Rights 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.



# Oregon

Kate Brown, Governor

## Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

January 13, 2020

MICHAEL BECKER  
PO BOX 1159  
LA GRANDE, OR 97850

SUBJECT: Water Right Transfer Application T-13129

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13129. 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 La Grande Observer 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 503-986-0884 or [Sarah.A.Henderson@oregon.gov](mailto:Sarah.A.Henderson@oregon.gov) if I may be of assistance.

Sincerely,

Sarah Henderson  
Transfer Specialist  
Transfer and Conservation Section

cc: T-13129  
Shad L. Hattan, District 6 Watermaster (via e-mail)  
Elizabeth Howard, Agent for the applicant (via e-mail)  
Anika Marriott, Department of Justice (via e-mail)

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