

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13081, Wasco County)	PROPOSING APPROVAL OF
)	CHANGES IN PLACE OF USE AND
)	ADDITIONAL POINTS 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

A & L VINEYARD ENTERPRISES, LLC
5450 MILL CREEK RD.
THE DALLES, OR 97058

Agent

TENNESON ENGINEERING CORP.
ATTN: LARRY TOLL
3775 CRATES WAY
THE DALLES, OR 97058

Findings of Fact

1. On December 26, 2018, A & L Vineyard Enterprises, LLC, filed an application to change the place of use and add additional points of appropriation under Certificates 88292 and 88293. The Department assigned the application number T-13081.
2. On November 20, 2018, Temporary Transfer T-13003 was approved. The temporary transfer proposed a temporary change in place of use under Certificates 88292 and 88293 for a period of four years.
3. Notice of the application for transfer was published on January 1, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On June 24, 2019, the agent for the applicant submitted a new revised map and associated revised Table 1 of the application for both water rights.
5. On July 1, 2019, the Department sent out a draft of the Preliminary Determination and set forth a deadline of July 31, 2019, for the applicant to respond. On July 19, 2019, the agent for the applicant requested additional time for completion of the transfer to be extended to October 1, 2024, to guarantee adequate time to complete the project. The Department

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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approved the additional time for completion of the transfer to be extended to October 1, 2024, to make full beneficial use of water under the terms and conditions of this transfer.

- The portion of the primary right and its layered supplemental water right to be transferred is as follows:

Certificate: 88292 in the name of LONNIE WRIGHT (perfected under Permit U-480)
Use: IRRIGATION of 15.2 ACRES
Priority Date: SEPTEMBER 29, 1952
Rate: 0.1177 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, 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.
Source: TWO WELLS within the MILL CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
1 N	13 E	WM	18	NW SW	44	OLD WELL; WASC 2598 - 940 FEET SOUTH AND 1205 FEET WEST FROM THE NE CORNER OF DLC 44
1 N	13 E	WM	18	NW SW	44	NEW WELL; WASC 51130 - 815 FEET SOUTH AND 685 FEET WEST FROM THE NE CORNER OF DLC 44

Certificate: 88293 in the name of LONNIE WRIGHT (perfected under Permit U-558)
Use: SUPPLEMENTAL IRRIGATION of 15.2 ACRES
Priority Date: JUNE 4, 1953
Rate: 0.0725 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, 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 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: TWO WELLS within the MILL CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
1 N	13 E	WM	18	NW SW	44	OLD WELL; WASC 2598 - 940 FEET SOUTH AND 1205 FEET WEST FROM THE NE CORNER OF DLC 44
1 N	13 E	WM	18	NW SW	44	NEW WELL; WASC 51130 - 815 FEET SOUTH AND 685 FEET WEST FROM THE NE CORNER OF DLC 44

Authorized Places of Use:

Twp	Rng	Mer	Sec	Q - Q	GLot	DLC	Acres	
							Cert# 88292 (IR)	Cert# 88293 (IS)
1 N	13 E	WM	18	NE SW		44	2.1	2.1
1 N	13 E	WM	18	NW SW		44	12.2	12.2
1 N	13 E	WM	18	SW SW	5		0.9	0.9
Total							15.2	15.2

8. Transfer Application T-13081 proposes to change the place of use of the above described rights to a combination of micro-irrigated strips within a larger land parcel. The acreages below represent the proposed irrigated area:

Twp	Rng	Mer	Sec	Q - Q	Acres	
					Cert# 88292 (IR)	Cert# 88293 (IS)
1 N	12 E	WM	24	NW NE	0.2	0.2
1 N	12 E	WM	24	SW NE	5.9	5.9
1 N	12 E	WM	24	SE NE	0.5	0.5
1 N	12 E	WM	24	NE NW	2.7	2.7
1 N	12 E	WM	24	NW NW	0.4	0.4
1 N	12 E	WM	24	NE SE	0.6	0.6
1 N	12 E	WM	24	NW SE	4.9	4.9
Total					15.2	15.2

9. Transfer Application T-13081 also proposes to add an additional point of appropriation to the above described rights southwest approximately 4450 feet from the Old Well and approximately 4950 feet from the New Well to:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
1 N	12 E	WM	24	NE NW	44	VINEYARD WELL - 365 FEET SOUTH AND 75 FEET WEST FROM THE N¼ CORNER OF SECTION 24

10. The applicant completed two temporary transfers (T-11823, and T-13003) proposing micro-irrigation. The applicant demonstrated during irrigation seasons of 2015 to 2018, their ability to irrigate only the crop rows without encroaching into the dry row areas located in between the crop rows. The Watermaster stated that the applicant submitted data satisfactorily demonstrating they could dry up the rows located in between the crop rows. Therefore, the Department accepts this permanent transfer application proposing a change in place of use for micro-irrigation and makes a positive finding that no injury or enlargement would occur as a result of this transfer.
11. Temporary transfer T-13003 must expire or be terminated by order of the Department prior to approval of this transfer application.
12. On January 13, 2020, the applicant's agent submitted authorization to terminate Temporary Transfer T-13003 with the approval of T-13081.

Transfer Review Criteria (OAR 690-380-4010)

13. Water has been used within the last five years prior to the submittal of Transfer Application T-13081 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. Wells, pumps, 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-13081.
15. If properly conditioned with requirements to install water measurement and soil moisture monitoring equipment, the proposed changes would not result in enlargement of the rights.
16. The proposed changes would not result in injury to other water rights.
17. All other application requirements are met.

Determination and Proposed Action

The changes in place of use and additional points of appropriation proposed in Transfer Application T-13081 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-13081 is approved, the final order will include the following:

1. *The changes in place of use and additional points of appropriation proposed in Transfer Application T-13081 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 88292 and 88293 and any related decree.*
3. *Water right Certificates 88292 and 88293 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
4. *The quantity of water diverted at the new additional point of appropriation (Vineyard Well), together with that diverted at the original points of appropriation (Old Well and New Well), shall not exceed the quantity of water lawfully available at the original points of appropriation (Old Well and New Well).*
5. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
6. *The former place of use of the transferred right shall no longer receive water under the right.*

7. *Water use measurement conditions:*

The water user shall install and maintain a water flow and soil moisture monitoring system.

- a) Before water use may begin under this order, the water user shall install a series of totalizing flow meters for the points of appropriation and the lands to be irrigated under this application, or, with prior approval of the Director, another suitable measuring device at each point of appropriation.*
- 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.*
- d) The water user shall install and maintain valves and in-line flow meters or other suitable devices for controlling, measuring and recording the quantity of water diverted. In-line flow meters shall be installed at each well and each field control manifold serving the drip irrigated areas. The type and plans of the valves and measuring devices must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.*
- e) The water user shall operate and maintain the valves and measuring devices, as needed. The Watermaster may monitor the system and accuracy of the measuring devices, as needed.*
- f) Flow meter readings shall be collected at a minimum of weekly intervals until one week past the end of the irrigation season. Flow meter data collected from the monitoring system shall be reported to the Watermaster within 3 days of the data collection date, as approved by the Watermaster. The Watermaster can approve less frequent reporting intervals if the project demonstrates, to the satisfaction of the Department, compliance with all conditions.*
- g) The monitoring system shall include Gro-Point Sensors or a similar monitoring system capable of accuracy that is equivalent to or superior to the level of accuracy provided by the Gro-Point system. The type of system and installation plans must be approved by the Watermaster prior to installation.*
- h) The soil moisture monitoring system may include up to ten paired sites and three control sites located adjacent to the planted area, such that the control sites share similar soil type, aspect and light conditions as the monitoring sites in the planted area. Each paired site shall consist of a pair of access tubes located within the dry non-irrigated strip between irrigated strips. Each access tube should be placed so that the outer edge of the probe's zone of influence will be within 2 inches of the edge of the irrigated strip. Additional soil moisture monitoring stations shall be installed as required by the Watermaster where conditions dictate more monitoring stations are required to effectively determine irrigation is occurring only where there is an appurtenant water right. The monitoring program, including both the number and location of the monitoring sites, shall be approved by the Watermaster prior to installation. The Watermaster can approve fewer soil moisture monitoring sites if the*

data collected is sufficient, to the satisfaction of the Department, for verifying there is no injury or enlargement.

- i) Soil moisture content shall be monitored continuously or collected at a minimum of weekly intervals until one week past the end of the irrigation season. Soil moisture data collected from the monitoring system shall be reported to the Watermaster in summary format including equipment used and monitoring data listed by station and measurement field, as approved by the Watermaster.*
 - j) Soil moisture reports shall be made during the first week prior to the irrigation season and once per week during the first three weeks of the irrigation season. Unless otherwise required by the Watermaster, soil moisture data collected shall be reported to the Watermaster within 3 days of the data collection date. Reporting requirements may be modified, as dictated by the Watermaster or upon written request from the water user subject to approval of the Watermaster. However, review of the monitoring program can occur at any time with a formal request from the water user or the Watermaster. Modification to the monitoring program may occur at any time as deemed necessary and/or appropriate by the Watermaster.*
 - k) Upon reasonable notice the water user shall provide the Watermaster access to metering equipment and moisture monitoring stations as well as access to monitoring data and flow data, including access to real time data on an internal web site or computer.*
 - l) The water user shall promptly inform the Watermaster of any situation that result in the application of water to any land without a water right, including but not limited to the areas between crop rows. The water user shall also inform the Watermaster of the course of action taken by the water user to correct the problem and prevent the future occurrence of similar events.*
- 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 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.*

10. Temporary transfer T-13003 is hereby terminated and no longer of any force or effect.

Dated at Salem, Oregon this JAN 28 2020,



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. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@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

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January 28, 2020

A & L VINEYARD ENTERPRISES, LLC
5450 MILL CREEK RD.
THE DALLES, OR 97058

SUBJECT: Water Right Transfer Application T-13081

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13081. 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 Dalles Chronicle 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-13081
Robert L. Wood, District 3 Watermaster *(via e-mail)*
Larry M. Toll, Agent for the applicant *(via e-mail)*

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