

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13335, Polk County	)	PROPOSING APPROVAL OF AN
	)	ADDITIONAL POINT OF DIVERSION
	)	AND A CHANGE IN PLACE 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

WILLIAM AND CYNTHIA MOSES
3505 SAMPLE RD.
FALLS CITY, OR 97344

Receiving Landowner

ALBERT HARRINGTON
3650 LUCAS RD.
FALLS CITY, OR 97344

Findings of Fact

1. On December 27, 2019, WILLIAM AND CYNTHIA MOSES filed an application for an additional point of diversion and to change the place of use under Certificate 12309. The Department assigned the application number T-13335.
2. Albert Harrington is the receiving landowner who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on December 31, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On January 3, 2020, the Department contacted the applicant's agent, requesting revisions to the map, and tables 1 and 2. On January 3, and, on January 7, 2020, the applicant's agent responded with revisions.
5. On January 8, 2020, the Department contacted the applicant's agent with a request to update the landowner page of the application. The applicant's agent responded the same day with the corrections.

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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6. On January 21, 2020, the Department contacted the applicant's agent with a request to update Part 5 of 5. On January 27, 2020, the applicant's agent responded with the correction.
7. On January 30, 2020, the applicant's agent sent another revision for the requested correction listed in Finding of Fact #6.
8. On February 4, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13335 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 5, 2020, for the applicants to respond. The applicants 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.
9. On February 27, 2020, the applicant contacted the Department, concerned that the transfer was written for a change in place of use of two acres, and not the one acre that he had agreed upon with the agent. On February 28, 2020 the applicant and the agent contacted the Department to continue the transfer as written, for two acres.
10. The portion of the right to be transferred is as follows:

Certificate: 12309 in the name of WM. V. SAMPLE (perfected under Permit S-5993)
Use: IRRIGATION of 2.0 ACRES
Priority Date: AUGUST 14, 1923
Rate: 0.025 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 conform to such reasonable rotation system as may be ordered by the proper state officer.
Source: EVERS CREEK, a tributary of NORTH FORK LUCKIAMUTE

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	6 W	WM	16	NW NW	NONE GIVEN

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
8 S	6 W	WM	16	NE NW	3	1.7
8 S	6 W	WM	16	SW NW		0.3
TOTAL						2.0

11. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 12309 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	6 W	WM	16	NW NW	POD 1 – 204 FEET SOUTH AND 719 FEET EAST FROM THE NW CORNER OF SECTION 16

12. Transfer Application T-13335 proposes an additional point of diversion approximately 0.2 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	6 W	WM	16	NW NW	POD 2 – 1330 FEET SOUTH AND 740 FEET EAST OF THE NW CORNER OF SECTION 16

13. Transfer Application T-13335 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	6 W	WM	16	SW NW	2.0

14. 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)]

15. 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 right is subject to forfeiture under ORS 540.610.
16. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-13335.
17. The proposed changes would not result in enlargement of the right.
18. The proposed changes would not result in injury to other water rights.
19. All other application requirements are met.

Determination and Proposed Action

The additional point of diversion and change in place of use proposed in Transfer Application T-13335 appear 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-13335 is approved, the final order will include the following:

- 1. The additional point of diversion and change in place of use proposed in Transfer Application T-13335 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 Certificate 12309 and any related decree.*
3. *Water right Certificate 12309 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the new additional point of diversion, (POD 2), together with that diverted at the original point of diversion, (POD 1), shall not exceed the quantity of water lawfully available at the original point of diversion, (POD 1).*
5. *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 diversion (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.*
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 right shall no longer receive water under the right.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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, a new certificate confirming the right transferred will be issued.*

MAR 24 2020

Dated in Salem, Oregon on _____


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

This Preliminary Determination was prepared by: Tamera Smith. If you have any questions about the information in this document, you may reach me at 503-986-0864 or tamera.l.smith@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 these proceedings under the federal Service members 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
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Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

March 24, 2020

WILLIAM AND CYNTHIA MOSES
3505 SAMPLE RD.
FALLS CITY, OR 97344

SUBJECT: Water Right Transfer Application T-13335

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13335. 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, 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 tamera.l.smith@oregon.gov or 503-986-0864, if I may be of assistance.

Kindest regards,

Tamera Smith
Transfer Caseworker
Transfer and Conservation Section

cc: T-13335 file
Gregory J. Wacker, District 22 Watermaster (*via e-mail*)
Richard Saunders, Agent for the applicant (*via e-mail*)
Albert Harrington, Receiving Landowner (*via e-mail*)

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