

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13023, Klamath County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF
	)	APPROPRIATION AND PLACE OF
	)	USE

**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**

MOSS RANCH LLC  
8555 W. LANGELL VALLEY RD.  
BONANZA, OR 97623

**Findings of Fact**

1. On September 7, 2018, MOSS RANCH LLC filed an application to change the point of appropriation and to change the place of use under Certificate 65412. The Department assigned the application number T-13023.
2. Notice of the application for transfer was published on September 18, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 10, 2019, the Department contacted the applicant by written correspondence to notify the applicant of a deficiency in the application. The applicant requested to change the place of use of 1.4 acres in SWNE of Section 31, T39S, R12E, WM. The Department determined a pond has existed, covering the 1.4 acres for the past 5 years, therefore these acres are not subject to transfer. The Department requested that the deficiency be resolved by November 8, 2019.
4. On November 8, 2019, the applicant submitted a revised Table 2 and map, removing the 1.4 acres from the application.

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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5. On January 2, 2020, the applicant submitted an Affidavit for the Voluntary Cancellation of a Portion of a Water Right Certificate, resolving the deficiency.
6. On January 23, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13023 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 24, 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 portion of the right to be transferred is as follows:

**Certificate:** 65412 in the name of INDIAN HILLS RANCH C/O MERLE NASH  
(perfected under Permit G-7654)

**Use:** IRRIGATION of 347.6 ACRES

**Priority Date:** JUNE 9, 1977

**Rate:** 4.35 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, shall be limited to ONE-EIGHTIETH 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 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** WELL 1 in the LOST RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	12 E	WM	31	SE NE	WELL 1 - 30 FEET NORTH AND 100 FEET WEST FROM THE E1/4 CORNER OF SECTION 31

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Proposed Change
39 S	11 E	WM	25	SW SW	1.1	POA
39 S	11 E	WM	25	SE SW	40.9	POA
39 S	11 E	WM	25	SW SE	1.3	POA
39 S	11 E	WM	26	NE SE	3.4	POA
39 S	11 E	WM	26	NW SE	4.7	POA
39 S	11 E	WM	26	SW SE	6.1	POA
39 S	11 E	WM	26	SE SE	26.9	POA
39 S	11 E	WM	35	NE NE	7.3	POA
39 S	11 E	WM	36	NW NE	3.6	POA
39 S	11 E	WM	36	NE NW	38.0	POA
39 S	11 E	WM	36	NW NW	32.7	POA
39 S	11 E	WM	36	SW NW	2.1	POA
39 S	11 E	WM	36	SE NW	12.8	POA
39 S	12 E	WM	31	NE NE	26.7	POA
39 S	12 E	WM	31	NW NE	5.3	POA/POU
39 S	12 E	WM	31	NW NE	34.7	POA
39 S	12 E	WM	31	SW NE	38.6	POA
39 S	12 E	WM	31	SE NE	37.1	POA

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Proposed Change
39 S	12 E	WM	31	NE NW	24.3	POA/POU
Total					347.6	

8. Transfer Application T-13023 proposes to move the authorized point of appropriation approximately 58.0 feet North from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	12 E	WM	31	SE NE	WELL 2 - 88 FEET NORTH AND 100 FEET WEST FROM THE E1/4 CORNER OF SECTION 31

9. Transfer Application T-13023 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	11 E	WM	25	SW SW	29.6

***Transfer Review Criteria (OAR 690-380-4010)***

10. 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.
11. 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-13023.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.
14. All other application requirements are met.

***Partial Cancellation of a Water Right***

15. On January 2, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Randy Moss of Moss Ranch, LLC. The right to be cancelled is as follows:

**Certificate:** 65412 in the name of INDIAN HILLS RANCH C/O MERLE NASH  
(perfected under Permit G-7654)

**Use:** IRRIGATION of 1.4 ACRES

**Priority Date:** JUNE 9, 1977

**Rate:** 0.01 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 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:** WELL 1 in the LOST RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
39 S	12 E	WM	31	SE NE	WELL 1 - 30 FEET NORTH AND 100 FEET WEST FROM THE E1/4 CORNER OF SECTION 31

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
39 S	12 E	WM	31	SW NE	1.4

**Determination and Proposed Action**

The change in point of appropriation and change in place of use proposed in Transfer Application T-13023 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 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-13023 is approved, the final order will include the following:*

1. *The change in point of appropriation and change in place of use proposed in Transfer Application T-13023 is approved. The portion of the right that has been abandoned is cancelled.*
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 65412 and any related decree.*
3. *Water right Certificate 65412 is cancelled.*
4. *The quantity of water diverted at the new point of appropriation (Well 2), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 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 new 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.*
6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*

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.*

Dated in Salem, Oregon on

**MAY 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 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](mailto: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.*

**IMPORTANT:** Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

**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

May 28, 2020

MOSS RANCH LLC  
8555 W. LANGELL VALLEY RD.  
BONANZA, OR 97623

SUBJECT: Water Right Transfer Application T-13023

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13023. 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.

**IMPORTANT:** Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Please do not hesitate to contact me, at [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@oregon.gov) or (503) 986-0825, if I may be of assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Corey Courchane".

Corey Courchane  
Transfer Specialist  
Transfer and Conservation Section

cc: T-13023  
Danette M. Watson, District 17 Watermaster (*via e-mail*)  
Bryce McKinney, Agent for the applicant (*via e-mail*)

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