

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

| | | |
|---------------------------------------|---|-------------------------------|
| In the Matter of Transfer Application |) | PRELIMINARY DETERMINATION |
| T-12383, Malheur County |) | PROPOSING APPROVAL FOR AN |
| |) | ADDITIONAL POINT OF DIVERSION |
| |) | AND A CHANGE IN PLACE OF USE |

Authority

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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

JR LAND AND LIVESTOCK
PO BOX 800
HARPER, OR 97906

Agent

PAT WOODCOCK, PE
ENGINERRING NORTHWEST LLC
11 NW 9TH STREET
ONTARIO, OR 97914

Findings of Fact

Background

1. On May 16, 2016, JR Land and Livestock filed an application for an additional point of diversion and to change the place of use under Certificate 2730. The Department assigned the application number T-12383.
2. Notice of the application for transfer was published on May 10, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 13, 2016, the Department sent written correspondence to the agent for the applicant addressing multiple issues including application and mapping errors.
4. On July 19, 2019, the Department sent a letter to the agent for the applicant addressing multiple issues including mapping errors. The letter set forth a deadline of August 18, 2019, for the applicant to respond.
5. On October 25, 2019, the agent requested an additional 60 days to address mapping problems and to complete the portions of the transfer application and submit the items requested. The Department approved an additional 60 days in which to complete the needed revisions and gave the applicant until December 25, 2019, to submit the items necessary to

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 processing the application. As of January 2, 2020, the Department had not received the amended, revised application and additional items necessary to continue with the processing of Transfer Application T-12383.

6. On January 7, 2020, the Department sent a copy of the draft Preliminary Determination proposing to deny Transfer Application T-12383 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 6, 2020, for the applicant to respond.
7. On February 6, 2020, the applicant submitted a revised application and map to remedy the conflict with a layered right outlined in the January 7, 2020, cover letter. The applicant also requested the Department proceed with issuance of the Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

8. The right to be transferred is as follows:

Certificate: 2730 in the name of FRANCIS O'NEILL (confirmed by Malheur River (F) decree)
Use: IRRIGATION of 24.0 ACRES, DOMESTIC and STOCK USE during all the year
Priority Date: 1883
Limit/Duty: The amount of water to which such right is entitled and hereby confirmed for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.50 cubic foot per second, and shall be subject to all other conditions and limitations in said decree.
Source: COTTONWOOD CREEK, a tributary of BULLY CREEK

Authorized Place of Use:

| IRRIGATION (IR), DOMESTIC and STOCK USE | | | | | |
|---|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q - Q | Acres |
| 18 S | 43 E | WM | 9 | SW NW | 24.0 |

9. Certificate 2730 does not describe the point of diversion location on Cottonwood Creek. However, the Department's 1910 adjudication map identifies a diversion dam structure and ditch within the SW¼ SW¼, Section 5, T 18 S, R 43 E, W.M., on Cottonwood Creek.

10. Information available from the applicant's map and based on a recent field visit and survey indicates that the original point of diversion is located as follows:

| Twp | Rng | Mer | Sec | Q - Q | Measured Distances |
|------|------|-----|-----|-------|--|
| 18 S | 43 E | WM | 8 | NW NE | POD #1 - 911.7 FEET SOUTH AND 2016.6 FEET WEST FROM THE NE CORNER OF SECTION 8 |

11. Transfer Application T-12383 proposes to change the place of use of the above described 24.0 acres to:

| IRRIGATION, DOMESTIC AND STOCK USE | | | | | |
|------------------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q - Q | Acres |
| 18 S | 43 E | WM | 8 | NW NE | 1.5 |
| 18 S | 43 E | WM | 8 | NE NW | 16.5 |
| 18 S | 43 E | WM | 8 | NW NW | 6.0 |
| TOTAL: | | | | | 24.0 |

12. Transfer Application T-12383 also proposes to add an additional point of diversion for the above described 24.0 acres at the new place of use upstream approximately 4000 feet to:

| Twp | Rng | Mer | Sec | Q - Q | Measured Distances |
|------|------|-----|-----|-------|--|
| 18 S | 43 E | WM | 5 | SW SW | POD #2 - 239.4 FEET NORTH AND 4888.7 FEET WEST FROM THE NE CORNER OF SECTION 8 |

13. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is currently equipped with an appropriate fish screen.

Transfer Review Criteria [OAR 690-380-4010(2)]

14. 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 right is subject to forfeiture under ORS 540.610.
15. 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-12383.
16. The proposed changes would not result in enlargement of the right.
17. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The change in place of use and additional point of diversion proposed in Transfer Application T-12383 appears 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-12383 is approved, the final order will include the following:

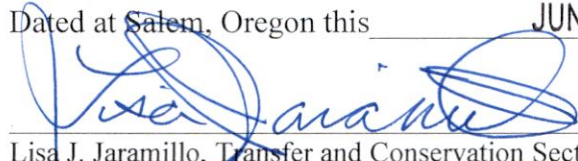
1. *The change in place of use and the additional point of diversion proposed in Transfer Application T-12383 is approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 2730 and any related decree.*

3. *Water right Certificate 2730 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. *The former place of use of the transferred right shall no longer receive water under the right.*
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 new point of diversion.*
 - b. *The water user shall maintain the meter or measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
7. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
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 change 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 at Salem, Oregon this JUN 04 2020.



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

This Preliminary Determination was prepared by 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 Ken Dowden. T-12383 has now been 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

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 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

June 4, 2020

JR LAND AND LIVESTOCK
PO BOX 800
HARPER, OR 97906

SUBJECT: Water Right Transfer Application T-12383

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12383. 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 Argus 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.

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Please do not hesitate to contact me, at 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-12383
Ron Jacobs, District 9 Watermaster (*via e-mail*)
Pat Woodcock, Agent for the applicant (*via e-mail*)

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