

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12791, JACKSON County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE AND
)	ADDITIONAL POINT 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

COBY AND MARCIE ROBERTS TRUST
47710 LEWIS CREEK RD.
OAKHURST, CA 93644

Agent

HOLLIE CANNON
C/O: WATER RIGHT SOLUTIONS, LLC
3246 HAMMER STEET
KLAMATH FALLS, OR, 97603

Findings of Fact

1. On December 15, 2017, John and Marcie Roberts filed an application for an additional point of appropriation and to change the place of use under Certificate 93165. The Department assigned the application number T-12791.
2. Notice of the application for transfer was published on December 26, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 25, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12791 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 23, 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.

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.

4. The right to be transferred is as follows:

Certificate: 93165 in the name of COBY AND MARCIE ROBERTS TRUST, JOHN COBURN ROBERTS, TRUSTEE, MARCIE ROBERTS, TRUSTEE
(perfected under Permit G-16408)
Use: IRRIGATION of 11.74 ACRES
Priority Date: SEPTEMBER 21, 2007
Rate: 0.113 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 and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.
Period of Use: APRIL 1 THROUGH OCTOBER 31
Source: WELL 1 (JACK 3425) in the CONSTANCE CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
35 S	2 W	WM	12	NW SE	WELL 1 - 1726.3 FEET NORTH AND 1808.3 FEET WEST FROM THE SE CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q - Q	Changes Requested (acres)		Total Acres
					▲POU (only)	▲APOA (all)	
35 S	2 W	WM	12	NW SE	3.41	8.22	8.22
35 S	2 W	WM	12	SW SE	1.29	3.52	3.52
TOTAL:					4.70	11.74	11.74

5. Transfer Application T-12791 proposes to change the place of use of a portion of the above described acres to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
35 S	2 W	WM	12	SW SE	413	2.40
35 S	2 W	WM	12	SW SE	424	2.30
TOTAL:						4.70

6. Transfer Application T-12791 proposes an additional point of appropriation for the entire 11.74 acres southeast approximately 190 feet to POA #2 located:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
35 S	2 W	WM	12	NW SE	POA #2 - 1562 FEET NORTH AND 1750 FEET WEST FROM THE SE CORNER OF SECTION 12

Transfer Review Criteria (OAR 690-380-4010)

7. The Department has determined that the proposed construction on the proposed additional well, POA #2, will develop the same source of water (aquifer) as the authorized existing Well 1 (JACK 3425).
8. Water has been used within the last five years prior to the submittal of Transfer Application T-12791 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.
9. A well, pump, pipeline, and delivery 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-12791.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.
12. All other application requirements are met.

Determination and Proposed Action

The additional point of appropriation and changes in place of use proposed in Transfer Application T-12791 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-12791 is approved, the final order will include the following:

1. *The changes in place of use and additional point of appropriation proposed in Transfer Application T-12791 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 93165 and any related decree.*
3. *Water right Certificate 93165 is cancelled.*
4. *The quantity of water diverted at the new additional point of appropriation (POA #2), together with that diverted at the original point of appropriation (Well 1), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 1).*
5. *Water shall be acquired from the same aquifer (water source) as the original point 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:*
 - 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.*
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 at Salem, Oregon this JUN 09 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.

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 9 , 2020

COBY AND MARCIE ROBERTS TRUST
47710 LEWIS CREEK RD.
OAKHURST, CA 93644

SUBJECT: Water Right Transfer Application T-12791

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12791. 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 or (503) 986-0825, if I may be of assistance.

Sincerely,

A handwritten signature in blue ink that reads "Corey Courchane". The signature is fluid and cursive, with the first name "Corey" and last name "Courchane" clearly distinguishable.

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-12791
Shavon L. Haynes, District 13 Watermaster (*via e-mail*)
Hollie Cannon, Agent for the applicant (*via e-mail*)

encs