

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

In the Matter of Transfer Application            )  
T-12909, Deschutes County                    )  
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PRELIMINARY DETERMINATION  
PROPOSING APPROVAL OF A  
CHANGE IN PLACE OF USE AND  
POINT OF APPROPRIATION,  
PARTIAL DIMINUTION OF A WATER  
RIGHT AND PARTIAL  
CANCELLATION OF A WATER  
RIGHT

**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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicant**

MARC AND PAMELA THALACKER  
70625 NW LOWER BRIDGE WAY  
TERREBONNE, OR 97760

**Receiving Landowner**

LAURA ANN McCALLUM TRUST  
69401 GOODRICK ROAD  
SISTERS, OR 97759

**Findings of Fact**

1. On April 20, 2018, Marc and Pamela Thalacker filed an application to change the place of use and to change the point of appropriation under Certificates 74139, 74196 and 75762. The Department assigned the application number T-12909.
2. Laura Ann McCallum Trust is the receiving landowner who will be responsible for completion of the changes.
3. On March 27, 2018, the Department determined that the lands under Certificates 74139 and 74196 proposed for changing place of use, were not subject to transfer due to non-use of water since 2011. The Department requested to have the lands described withdrawn from

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.

Transfer Application T-12909, and provided an Affidavit for the Voluntary Cancellation of a Portion of a Water Right Certificate for each certificate to the applicant.

4. Notice of the application for transfer was published on May 1, 2018, pursuant to OAR 690-380-4000. Two timely comments were filed in response to the notice and summarized as follows:
  - The proposed transfer would result in the enlargement of the existing supplemental groundwater rights proposed to be transferred, as none of the three supplemental water rights seem to be appurtenant to an underlying primary right;
  - Supplemental groundwater permits are quickly becoming obsolete and can no longer be put to beneficial use;
  - The water is publicly owned. If groundwater rights can no longer be put to a beneficial use, exercising those rights is no longer necessary or practical, and the water should be left in the ground to support the local springs and streams;
  - The proposed supplemental groundwater rights transfer would move an obsolete groundwater right from one sub-basin to another separate sub-basin that has been closed from further appropriation; and
  - This seems to be a proposed transfer of a supplemental groundwater right to use as a new primary water right in an area where the groundwater is no longer subject to appropriation.
5. On March 27, 2019, the Department informed the applicant that lands proposed for transfer under Certificates 74139 and 74196, are subject to cancellation due to non-use since 2011 when the underlying primary rights were removed. The Department indicated withdrawing the certificates from the application and submitting affidavits for partial cancellation would resolve the deficiencies.
6. On April 23, 2019, the Department contacted the applicant by written correspondence regarding the withdrawal of Certificates 74139 and 74196 and the affidavits for partial cancellation, as the Department had not received a response from the applicant.
7. On May 23, 2019, the applicant informed the Department to proceed with the withdrawal of Certificates 74139 and 74196 from T-12909.
8. On May 31, 2019, the Department received an Affidavit for the Voluntary Cancellation of a Portion of a Water Right Certificate for Certificates 74139 and 74196.
9. On November 5, 2019, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent, that a revised application and map identifying Certificate 75762 as the only water right being transferred, would need to be submitted. The Department requested that the revised application be submitted by December 6, 2019.

10. On January 8, 2020, the applicant submitted a revised application and map which identified Certificate 75762 as the only water right to be transferred, resolving all deficiencies.
11. On January 30, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12909 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 3, 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.
12. The portion of the right to be transferred is as follows:

**Certificate:** 75762 in the name of DESCHUTES VALLEY FARMS (perfected under Permit G-4396)  
**Use:** SUPPLEMENTAL IRRIGATION of 32.5 ACRES  
**Priority Date:** APRIL 15, 1969  
**Rate:** 0.4063 CUBIC FOOT PER SECOND (cfs)  
**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:** A WELL in the DESCHUTES RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
14 S	12 E	WM	17	SW NW	WELL 9 - 20 FEET SOUTH AND 980 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 17

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
14 S	12 E	WM	17	SW NW	32.5

13. Transfer Application T-12909 proposes to change the point of appropriation for the right approximately 6 ¾ miles to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
14 S	11 E	WM	31	SE NE	PROPOSED POA - 50 FEET NORTH AND 1320 FEET WEST FROM E¼ CORNER OF SECTION 31

14. Transfer Application T-12909 also proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
14 S	11 E	WM	31	NE SE	9.9
14 S	11 E	WM	31	SE SE	22.6
Total					32.5

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

15. Water has been used within the five years prior to the submittal of Transfer Application T-12909 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.
16. A pump, 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-12909.
17. The proposed change would not result in enlargement of the rights.
18. The proposed change would not result in injury to other water rights.
19. All other application requirements are met.

**Diminution of a Certain Water Right**

20. On April 20, 2018, the agent for the applicant stated they would like to bring in a more senior priority date as their primary water right and requested the Department diminish a portion of Certificate 74140 for 32.5 acres of primary irrigation to supplemental irrigation.

The right proposed to be diminished from primary irrigation to supplemental irrigation is described as follows:

**Certificate:** 74140 in the name of MARC AND PAMELA THALACKER (perfected under Permit G-4396)  
**Use:** IRRIGATION of 32.5 ACRES  
**Priority Date:** April 15, 1969  
**Rate:** 0.41 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 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** WELL #9 in the DESCHUTES RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
14 S	12 E	WM	17	SW NW	20 FEET SOUTH AND 980 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 17

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
14 S	12 E	WM	17	SW NW	32.5

**Partial Cancellation of a Water Right**

21. On April 20, 2018, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Marc and Pamela Thalacker. The right to be cancelled is as follows:

**Certificate:** 75762 in the name of DESCHUTES VALLEY FARMS (perfected under Permit G-4396)  
**Use:** SUPPLEMENTAL IRRIGATION of 0.2 ACRES  
**Priority Date:** APRIL 15, 1969  
**Rate:** 0.0003 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, 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:** A WELL in the DESCHUTES RIVER BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
14 S	12 E	WM	17	SW NW	WELL #9 - 20 FEET SOUTH AND 980 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 17

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
14 S	12 E	WM	17	SW NW	0.2

22. On May 31, 2019, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Marc and Pamela Thalacker. The right to be cancelled is as follows:

**Certificate:** 74139 in the name of MARC AND PAMELA THALACKER (perfected under Permit G-8683)  
**Use:** SUPPLEMENTAL IRRIGATION of 7.5 ACRES.  
**Priority Date:** OCTOBER 18, 1979  
**Rate:** 0.09 CUBIC FOOT PER SECOND  
**Limit/Duty:** The amount of water used for irrigation is 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** A WELL in the DESCHUTES RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
14 S	12 E	WM	17	SW NW	WELL #9 - 20 FEET SOUTH AND 980 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 17

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
14 S	12 E	WM	7	SW SE	4.0
14 S	12 E	WM	7	SE SE	3.5
Total					7.5

23. On May 31, 2019, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Marc and Pamela Thalacker. The right to be cancelled is as follows:

**Certificate:** 74196 in the name of MARC AND PAMELA THALACKER (perfected under Permit G-4396)

**Use:** SUPPLEMENTAL IRRIGATION of 12.5 ACRES

**Priority Date:** APRIL 15, 1969

**Rate:** 0.16 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 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:** WELL #9 in the DESCHUTES BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
14 S	12 E	WM	17	SW NW	WELL #9 - 20 FEET SOUTH AND 980 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 17

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
14 S	12 E	WM	18	NW SE	12.5

**Determination and Proposed Action**

The change in place of use and change in point of appropriation proposed in Transfer Application T-12909 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. The right requested to be diminished should be diminished to supplemental irrigation and the abandoned portion of the right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

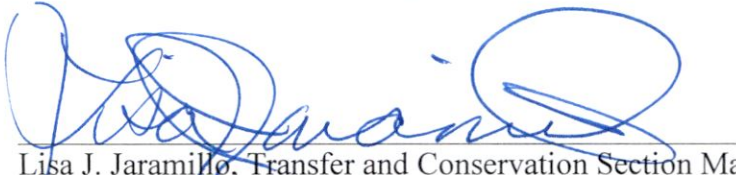
*If Transfer Application T-12909 is approved, the final order will include the following:*

- 1. The change in place of use and change in point of appropriation proposed in Transfer Application T-12909 are approved. Those portions of Certificates 74139, 74196, and 75762 that have been abandoned are cancelled. Certificate 74140 is diminished.*
- 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 75762 and any related decree.*

3. *Water right Certificate 75762 is cancelled. A new certificate will be issued describing those portions of the right not affected by this transfer and cancellation.*
4. *The quantity of water diverted at the new point of appropriation (Proposed POA) shall not exceed the quantity of water lawfully available at the original point of appropriation (Well #9).*
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 at Salem, Oregon this JUN 23 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.*

**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.**

**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 23, 2020

MARC AND PAMELA THALACKER  
70625 NW LOWER BRIDGE ROAD  
TERREBONNE, OR 97760

SUBJECT: Water Right Transfer Application T-12909

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12909. 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 Bulletin 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.

**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 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-12909  
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)  
Michele W. Sims, Agent for the applicant (*via e-mail*)  
Laura Ann McCallum Trust, Receiving Landowner (*via e-mail*)

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