

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13278, Polk County)	PROPOSING APPROVAL OF 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

BROADMEAD LLC
JAMES D. AND
HEIDI L. HARPER, MEMBERS
1150 NW QUIMBY ST UNIT 334
PORTLAND, OR 97209

Findings of Fact

1. On October 25, 2019, BROADMEAD LLC, JAMES D. AND HEIDI L. HARPER, MEMBERS, filed an application to change the place of use under Certificate 87954. The Department assigned the application number T-13278.
2. Notice of the application for transfer was published on November 5, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 15, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-13278 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of February 17, 2020, for the applicant to respond.

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. **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.

4. On February 18, 2020, the applicant's agent submitted revisions of application Table 2, the map, and Evidence of Use. The revisions to Table 2 and the map matched the number of "To" and "From" acres for the change in place of use, thereby removing enlargement from the application. The new Evidence of Use correctly called out Certificate 87954. The revisions removed the issues called out in the draft Preliminary Determination to deny.
5. On March 9, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13278 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 9, 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.
6. The portion of the right to be transferred is as follows:

Certificate: 87954 in the name of BROADMEAD LLC (perfected under Permit S-50853)
Use: IRRIGATION of 8.07 ACRES
Priority Date: DECEMBER 13, 1989
Rate: 16.98 ACRE-FEET
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 not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: WALKER-VAN OTTEN RESERVOIR CONSTRUCTED UNDER PERMIT R-1405, TRIBUTARY TO SALT CREEK

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	5 W	WM	11	SE SW	47	RE-DIVERSION - 2228 FEET NORTH AND 1405 FEET EAST FROM THE SW CORNER OF JOHN EADES DLC 47

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	5 W	WM	11	SW SW	47	0.88
6 S	5 W	WM	14	NW NW	47	7.19
TOTAL						8.07

7. Transfer Application T-13278 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	5 W	WM	11	NE SE	47	3.40
6 S	5 W	WM	11	SE SW	47	4.67
TOTAL						8.07

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

8. 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.
9. 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-13278.
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 have been met.

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-13278 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.

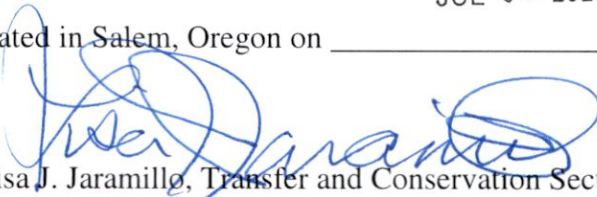
If Transfer Application T-13278 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-13278 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 87954 and any related decree.*
3. *Water right Certificate 87954 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *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 or 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.*
5. *The former place of use of the transferred right shall no longer receive water under the right.*

6. *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.*
7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

JUL 08 2020

Dated in Salem, Oregon on _____



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

This draft 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. **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

JULY 8, 2020

VIA EMAIL

BROADMEAD LLC
JAMES D. AND
HEIDI L. HARPER, MEMBERS
1150 NW QUIMBY ST UNIT 334
ORTLAND, OR 97209

SUBJECT: Water Right Transfer Application T-13278

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13278. 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.

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Please do not hesitate to contact me at 503-986-0886 or Patrick.K.Starnes@ wrd.state.or.us if I may be of assistance.

Kindest regards,

Tamera Smith
Transfer Caseworker
Transfer and Conservation Section

cc: T-13278 file
Joel Plahn, District 16 Watermaster (via e-mail)
Leanna Boatwright, Agent for the applicant (via e-mail)