

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-13279, Deschutes County) PROPOSING APPROVAL OF
) A CHANGE IN POINT OF
) APPROPRIATION AND CHANGES IN
) PLACES 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

RANDY AND LAURA SHEPARD
PO BOX 1087
SISTERS, OR 97759

Findings of Fact

1. On October 29, 2019, RANDY AND LAURA SHEPARD filed an application to change the point of appropriation and place of use under Certificate 94453 and to change the place of use under Certificate 87232. The Department assigned the application number T-13279.
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 June 11, 2020, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13279 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of July 13, 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.

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. The first right to be transferred is as follows:

Certificate: 94453 in the name of PATRICK DRENNEN; FRANCES DRENNEN
(perfected under Permit G-12549)
Use: IRRIGATION of 2.0 ACRES
Priority Date: AUGUST 11, 1993
Rate: 0.025 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, 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.

Period of Use: March 1 through October 31

Source: A WELL in the DESCHUTES RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	11 E	WM	19	NW NE	665 FEET SOUTH AND 908 FEET EAST FROM THE N1/4 CORNER OF SECTION 19

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	11 E	WM	19	NW NE	2.0

5. Transfer Application T-13279 proposes to move the authorized point of appropriation approximately 3.8 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
16 S	11 E	WM	7	SE NE	POA 2 - 806.78 FEET NORTH AND 941.7 FEET WEST FROM THE E1/4 CORNER OF SECTION 7

6. Transfer Application T-13279 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	11 E	WM	7	SE NE	2.0

7. The portion of the second right to be transferred is as follows:

Certificate: 87232 in the name of CATHLEEN WARNER (perfected under Permit G-12549)
Use: IRRIGATION of 0.31 ACRE
Priority Date: AUGUST 11, 1993
Rate: 0.004 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, 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.

Period of Use: March 1 through October 31

Source: A WELL in the DESCHUTES RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
16 S	11 E	WM	7	SE NE	806.78 FEET NORTH AND 941.7 FEET WEST FROM THE E1/4 CORNER OF SECTION 7

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	11 E	WM	7	SE NE	0.31

8. Transfer Application T-13279 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	11 E	WM	7	SE NE	0.31

Transfer Review Criteria (OAR 690-380-4010)

9. 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 rights are subject to forfeiture under ORS 540.610.
10. 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-13279.
11. The proposed changes would not result in enlargement of the rights.
12. The proposed changes would not result in injury to other water rights.
13. All other application requirements are met.

Determination and Proposed Action

The change in point of appropriation and change in place of use under Certificate 94453 and the change in place of use under Certificate 87232 proposed in Transfer Application T-13279 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-13279 is approved, the final order will include the following:

1. *The change in point of appropriation and change in place of use under Certificate 94453 and the change in place of use under Certificate 87232 proposed in Transfer Application T-13279 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 Certificates 94453 and 87232 and any related decree.*
3. *Water right Certificate 94453 is cancelled.*

4. *Water right Certificate 87232 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
5. *Under Water right Certificate 94453, The quantity of water diverted at the new point of appropriation (POA 2), shall not exceed the quantity of water lawfully available at the original point of appropriation.*
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 point of appropriation (new and existing).*
 - 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 devices; provided however, where the meter or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
7. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
8. *The former places of use of the transferred right shall no longer receive water under the rights.*
9. *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.*
10. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

AUG 26 2020

Dated in Salem, Oregon on



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

This Preliminary Determination was prepared by Arla L Davis. If you have questions about the information in this document, you may reach me at arla.l.davis@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.

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

August 26, 2020

VIA E-MAIL

RANDY AND LAURA SHEPARD
PO BOX 1087
SISTERS, OR 97759

SUBJECT: Water Right Transfer Application T-13279

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13279. 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 Bend 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.

Please do not hesitate to contact me at arla.l.davis@oregon.gov if I may be of assistance.

Sincerely,

Arla L Davis
Transfer Specialist
Transfer and Conservation Section

cc: T-13279
Jeremy T. Giffin, District 11 Watermaster (via e-mail)
Michele Sims, Agent for the applicant (via e-mail)

encs