

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13280, Klamath County	)	PROPOSING APPROVAL FOR AN
	)	ADDITIONAL POINT OF
	)	APPROPRIATION, AND A CHANGE
	)	IN PLACES OF USE AND
	)	CHARACTER 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**

ERIK STEIMLE  
SWAN LAKE NORTH HOLDINGS, LLC  
220 NW 8TH AVE  
PORTLAND, OR 97209

**Receiving Landowner**

SWAN LAKE NORTH HOLDINGS, LLC  
C/O ERIK STEIMLE  
C/O RYE DEVELOPMENT  
220 NW 8TH AVE  
PORTLAND, OR 97209

**Findings of Fact**

1. On October 30, 2019, ERIK STEIMLE, SWAN LAKE NORTH HOLDINGS, LLC filed an application for an additional point of appropriation, and to change the place of use and the character of use of a portion of Certificate 87006, and to change the place of use and character of use of a portion of Certificate 92375. The Department assigned the application number T-13280.
2. Swan Lake North Holdings, LLC is the receiving landowner who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on November 12, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On January 9, 2020, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of a deficiency in the application. Based on the

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.

Watermaster's review, it was determined the "FROM" lands could continue to receive water under the rights, creating a potential for enlargement. The Department requested that the deficiency be resolved by March 9, 2020.

5. On March 4, 2020, the Department received a revised Watermaster review, resolving the deficiency.
6. On September 10, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13280 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 12, 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.
7. On September 14, 2020, the applicant's agent submitted a request to extend the date for completion of full beneficial use of the water to October 1, 2026. Project construction and initial filling of the reservoir will likely extend through 2025.
8. The portion of the first right to be transferred is as follows:

**Certificate:** 87006 in the name of JESPERSEN EDGEWOOD INC. (perfected under Permit G-10952)  
**Use:** IRRIGATION of 18.5 ACRES  
**Priority Date:** JUNE 28, 1982  
**Rate:** 0.23 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 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** A WELL in the SWAN LAKE BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	10 E	WM	8	NW SW	WELL 4 - 2020 FEET NORTH AND 500 FEET EAST FROM THE SW CORNER OF SECTION 8

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	10 E	WM	29	NW NE	18.5

9. Transfer Application T-13280 proposes an additional point of appropriation approximately 0.5 mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	10 E	WM	8	SW NE	WELL 3 - 3240 FEET NORTH AND 2670 FEET EAST FROM THE SW CORNER OF SECTION 8

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

**Certificate:** 92375 in the name of JESPERSEN EDGEWOOD, INC. (perfected under Permit G-7293)  
**Use:** IRRIGATION of 123.1 ACRES  
**Priority Date:** MARCH 3, 1977  
**Rate:** 1.42 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) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.  
**Source:** A WELL in the SWAN LAKE BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	10 E	WM	8	SW SW	WELL 2 - 70 FEET NORTH AND 100 FEET EAST FROM THE SW CORNER OF SECTION 8

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	10 E	WM	29	NE SE	40.0
37 S	10 E	WM	29	NW SE	35.0
37 S	10 E	WM	29	SW SE	12.3
37 S	10 E	WM	29	SE SE	35.8
Total					123.1

11. Transfer Application T-13280 proposes to change the character of use under Certificates 87006 and 92375 to hydroelectric power generation and reservoir maintenance, in order to maintain reservoir water levels and account for annual losses due to evaporation.

12. Transfer Application T-13280 also proposes to change the place of use under the rights to:

HYDROELECTRIC POWER GENERATION AND RESERVOIR MAINTENANCE					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	10 E	WM	3	SW NW	12.7
37 S	10 E	WM	3	SE NW	4.5
37 S	10 E	WM	3	NE SW	31.5
37 S	10 E	WM	3	NW SW	15.4
37 S	10 E	WM	16	NW NE	0.5
37 S	10 E	WM	16	SW NE	1.7
37 S	10 E	WM	16	SE NE	5.3
37 S	10 E	WM	16	NE SE	17.6
37 S	10 E	WM	16	NW SE	25.1
37 S	10 E	WM	16	SW SE	11.4
37 S	10 E	WM	16	SE SE	0.5
Total surface area					126.3

13. Certificates 87006 and 92375 do not specify the irrigation season. Pursuant to the Swan Lake (F) decree, the irrigation season is fixed as beginning on March 15, and ending on September 30, of each year.
14. The total volume of water that may be diverted under Certificate 87006 for hydroelectric power generation and reservoir maintenance, as conditioned, is 55.5 Acre-Feet (AF) March 15 through September 30. ( $3.0 \times 18.5 = 55.5$ ).
15. The total volume of water that may be diverted under Certificate 92375 for hydroelectric power generation and reservoir maintenance, as conditioned, is 369.3 AF March 15 through September 30. ( $3.0 \times 123.1 = 369.3$ ).

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

16. 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.
17. 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-13280.
18. The proposed changes, as conditioned, would not result in enlargement of the rights. The District 17 Watermaster identified the former place of use under Certificates 87006 and 92375 could continue to be irrigated once the transfer is completed. The certificate holder of record has agreed to additional conditions to prevent enlargement of the rights.
19. The proposed changes would not result in injury to other water rights.
20. All other application requirements are met.

**Determination and Proposed Action**

The additional point of appropriation, change in places of use, and change in character of use proposed in Transfer Application T-13280 appears 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.

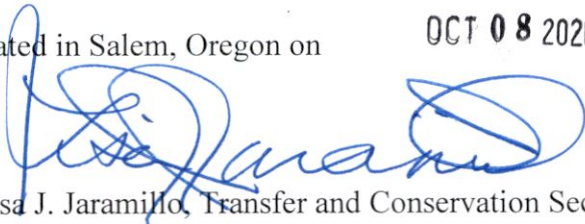
*If Transfer Application T-13280 is approved, the final order will include the following:*

1. *The additional point of appropriation, change in places of use, and change in character of use proposed in Transfer Application T-13280 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 87006 and 92375, and any related decree.*
3. *Water right Certificates 87006 and 92375 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*

4. *The quantity of water diverted, under the right authorized by Certificate 87006, at the new additional point of appropriation (Well 3), together with that diverted at the original point of appropriation (Well 4), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 4).*
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 point of appropriation (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.*
6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
7. *The former places of use of the transferred rights shall no longer receive water under the rights.*
8. *In order to prevent enlargement under Certificates 87006 and 92375. One field is a small pivot that will no longer be used. The other area is currently part of a half pivot. In order to keep water from reaching the area to be dried up, the certificate holder of record will move the auto-reverse bars to the border of the area to be dried up so that the pivot will simply reverse motion and will no longer cover the dried up area. In addition to this, the certificate holder of record is planning to install an auto valve on the pivot to prevent flooding in the event that the pivot's safety mechanism stops the pivot near the border of the dried up area.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before October 1, 2026. 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. *The use of water under the proposed hydroelectric power generation and reservoir maintenance shall be limited to a total rate of diversion of 1.65 cubic foot per second and further limited to a total quantity of water diverted of 424.8 acre-feet during the irrigation season.*

11. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated in Salem, Oregon on OCT 08 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](mailto: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 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

October 8, 2020

ERIK STEIMLE  
SWAN LAKE NORTH HOLDINGS, LLC  
220 NW 8TH AVE  
PORTLAND, OR 97209

SUBJECT: Water Right Transfer Application T-13280

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13280. 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 Klamath Falls Herald and News 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, appearing to read "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: Transfer Application file T-13280  
Danette M. Watson, District 17 Watermaster *(via e-mail)*  
Janet Neuman, Agent for the applicant *(via e-mail)*  
Edgewood Ranch, Inc., Landowner  
Peter D. Mohr, Attorney for Edgewood Ranch, Inc. *(via e-mail)*  
Mary Grainey, Hydroelectric Program Coordinator *(via e-mail)*  
R. Craig Kohanek, Hydroelectric Project Analyst *(via e-mail)*

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