

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13422, Jackson County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE AND
)	CHARACTER OF USE AND PARTIAL
)	CANCELLATION OF A WATER
)	RIGHT CERTIFICATE

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.

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

STEPHEN JENSEN
355 OTIS STREET
ASHLAND, OR 97520

Findings of Fact

1. On April 20, 2020, STEPHEN JENSEN filed an application to change the place of use and to change the character of use under Certificate 16028, and to cancel a portion of Certificate 23127. The Department assigned the application number T-13422.
2. Notice of the application for transfer was published on May 12, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 17, 2020, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of deficiencies in the application. The application did not include a Supplemental Form D, as the place of use is located within Talent Irrigation District, and a copy of the deed and a map was not included with the Affidavit for Partial Cancellation of a Water Right Certificate. The Department requested that the deficiencies be resolved by November 2, 2020.

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. On September 21, 2020, the applicant's agent submitted a Supplemental Form D, and a copy of the deed and map to accompany the Affidavit for Partial Cancellation, resolving the deficiencies.
5. On October 8, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13422 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 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: 16028 in the name of J. A. PARKER (confirmed by Rogue River Final Decree)
Use: IRRIGATION of 0.14 ACRE and STOCK
Priority Date: 1858
Rate: 0.003 CUBIC FOOT PER SECOND
Source: ASHLAND CREEK, a tributary of BEAR CREEK

Authorized Place of Use:

IRRIGATION AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	1 E	WM	5	SE NE	0.14

7. Transfer Application T-13422 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	1 E	WM	5	SE NE	0.14

8. Transfer Application T-13422 also proposes to change the character of use from stock to irrigation.
9. Certificate 16028 does not specify a period of allowed use; however, stock use is generally considered a year-round use. Irrigation would be limited to the irrigation season. Certificate 16028 does not specify an irrigation season; however, consistent with the Rogue River Decree, the irrigation season is April 1 through October 31. Information contained in the decree allows water to be diverted for stock year round; during the irrigation season water diverted for irrigation purposes includes water diverted for stock.
10. Certificate 16028 does not specify a total quantity of water to be diverted annually for stock use. The Department recognizes 0.005 cubic foot per second (cfs) as an allowable rate for stock. If diverted continuously at the authorized rate of 0.005 cfs for 365 days per year (0.005 cfs x 60 sec/min x 60 min/hr x 24 hr/day x 365 days/year ÷ 43,560 square feet per acre = 3.62 acre-feet per year), is the maximum that could have been diverted for stock.

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

- 11. 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.
- 12. A diversion structure and ditch 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-13422.
- 13. The proposed changes, as conditioned, would not result in enlargement of the right.
- 14. The proposed changes, as conditioned, would not result in injury to other water rights.
- 15. All other application requirements are met.

Partial Cancellation of a Water Right

- 16. On April 20, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Stephen Jensen. The right to be cancelled is as follows:

Certificate: 23127 in the name of B. H. CHRISTLIEB (perfected under Permit S-23819)

Use: SUPPLEMENTAL IRRIGATION of 0.22 ACRES

Priority Date: APRIL 15, 1955

Rate: 0.006 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, shall be limited to ONE-FORTIETH 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 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year, and shall also be limited to the water available at the proposed point of diversion, and shall not carry with it the right to compel the continuance of the waste water.

Source: WASTE WATER, a tributary of BEAR CREEK WATERSHED

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q - Q
39 S	1 E	WM	4	SW NW

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
39 S	1 E	WM	4	SE NE	0.22

Determination and Proposed Action

The change in place of use and change in character of use proposed in Transfer Application T-13422 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the abandoned right will be cancelled.

If Transfer Application T-13422 is approved, the final order will include the following:

- 1. The change in place of use and change in character of use proposed in Transfer Application T-13422 are approved. The portion of the right that has been abandoned is cancelled.*
- 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 16028 and any related decree.*
- 3. Water right Certificate 16028 is cancelled. A new certificate will be issued describing that portion of the rights not affected by this transfer and cancellation.*
- 4. Water right Certificate 23127 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.*
- 5. The rate of diversion for the change in character of use from stock to the proposed irrigation use shall be limited to 0.005 cubic foot per second and shall be further limited, as identified in Finding of Fact 9, to a total volume diverted of 3.62 acre-feet during the period of authorized use, being November 1 through March 31 of each year.*
- 6. The former place of use of the transferred right shall no longer receive water under the right.*
- 7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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.*

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

Dated in Salem, Oregon on



JAN 19 2021

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 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
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Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

January 19, 2021

STEPHEN JENSEN
355 OTIS STREET
ASHLAND, OR 97520

SUBJECT: Water Right Transfer Application T-13422

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13422. 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 Medford Mail Tribune 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 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-13422
Shavon L. Haynes, District 13 Watermaster (*via e-mail*)
James Edward Hibbs, Agent for the applicant (*via e-mail*)

encs