

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13364, Lake County	)	PROPOSING APPROVAL FOR
	)	ADDITIONAL POINTS OF
	)	DIVERSION AND CHANGES IN
	)	POINTS OF DIVERSION AND
	)	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

ROBIN L. VINCENT AND
DENAE M. VINCENT
97546 COGSWELL CREEK LN
LAKEVIEW, OR 97630

Findings of Fact

1. On February 10, 2020, Robin L. and DeNae M. Vincent submitted an application for additional points of diversion and a change in place of use under Certificate 5276, a change in points of diversion and a change in places of use under Certificates 7624 and 38348, and a change in places of use under Certificates 62705 and 41095. The Department assigned the application number T-13364.
2. Notice of the application for transfer was published on February 11, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 19, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13364 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of December 21, 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.
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4. The portion of the first right to be transferred is as follows:

Certificate: 5276 in the name of GEORGE C. FITZGERALD (confirmed by Goose Lake (F) decree)
Use: IRRIGATION of 121.53 ACRES, DOMESTIC AND STOCK USE
Priority Date: 1872
Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes and shall not exceed THREE-FOURTHS acre foot per acre during any 30-day period prior to June 1st, and TWO AND ONE-HALF acre foot per acre during any 30 day period after June 1st of each year: and two and one-half acre-feet per acre during any irrigation season: to be diverted under a head of not to exceed ONE-FORTIETH of a second foot per acre.
Source: COGSWELL CREEK

Authorized Point of Appropriation: NOT SPECIFIED ON CERTIFICATE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	20 E	WM	26	SW NE	36.32
40 S	20 E	WM	26	SE NE	9.02
40 S	20 E	WM	26	NE SE	40.00
40 S	20 E	WM	26	NW SE	36.19
Total:					121.53

5. The Department received information from the applicant that better describes the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	20 E	WM	25	SE NE	POD #2 - SOUTH 45 DEGREES 8 MINUTES AND 33 SECONDS EAST, 3662.62 FEET FROM THE NW CORNER OF SECTION 25

6. Transfer Application T-13364 proposes two additional points of diversion (APOD) with approximate distances in feet from the existing point of diversion (POD#2) downstream as described in the table below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from Authorized point of diversion
40 S	20 E	WM	25	SE NW	POD #1 - SOUTH 63 DEGREES 6 MINUTES 33 SECONDS EAST, 5790.58 FEET FROM THE NW CORNER OF SECTION 25	1368.4 feet
40 S	20 E	WM	25	NW SW	POD #3 - SOUTH 2 DEGREES 53 MINUTES 34 SECONDS EAST, 3218.84 FEET FROM THE NW CORNER OF SECTION 25	3938.3 feet

7. Transfer Application T-13364 also proposes to change the place of use of the right to:

IRRIGATION DOMESTIC AND STOCK USE						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of change
40 S	20 E	WM	23	SE SE	11.18	POU
40 S	20 E	WM	25	NE NW	15.00	POD 1 & 2-APOD
40 S	20 E	WM	25	NE NW	2.00	POD 1 & 2 -APOD
40 S	20 E	WM	25	SW NW	22.57	POD 1 & 2 -APOD
40 S	20 E	WM	25	SE NE	33.44	POD 1 & 2- APOD
40 S	20 E	WM	26	NE NE	20.56	POU
40 S	20 E	WM	26	NE SE	13.69	POD 1 & 3- POD
40 S	20 E	WM	26	NW SE	3.09	POD 1 & 3 - POD
Total:					121.53	

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

Certificate: 7624 in the name of W. R. ELLIOTT (perfected under Permit S-6763)

Use: IRRIGATION of 20 ACRES

Priority Date: MAY 15, 1925

Rate: 0.25 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-EIGHTIETH of one cubic foot per second per acre, or its equivalent in case of rotation.

Source: COGSWELL CREEK, a tributary of GOOSE LAKE

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	20 E	WM	25	SE NW	NOT DESCRIBED ON CERTIFICATE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	20 E	WM	25	SW NW	10.0
40 S	20 E	WM	25	SE NW	10.0
Total:					20.0

9. The applicant provided further information describing the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	20 E	WM	25	SE NW	POD # 1 - SOUTH 45 DEGREES 8 MINUTES 29 SECONDS EAST, 3662.62 FEET FROM THE NW CORNER OF SECTION 25

10. Transfer Application T-13364 proposes to move the authorized point of diversion approximately 1368.4 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	20 E	WM	25	SE NE	POD # 2 - SOUTH 60 DEGREES 50 MINUTES 39 SECONDS, 5032.25 FEET FROM THE NW CORNER OF SECTION 25

11. Transfer Application T-13364 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	20 E	WM	26	SW NE	5.62
40 S	20 E	WM	26	NW SE	14.38
Total:					20.0

12. The third right to be transferred is as follows:

Certificate: 38348 in the name of STEVE H. BAILEY and IRENE M. BAILEY
(perfected under Permit S-30519)
Use: IRRIGATION of 17.6 ACRES
Priority Date: MAY 11, 1965
Rate: 0.44 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: COGSWELL CREEK, a tributary of GOOSE LAKE

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	20 E	WM	25	NW SE	POD #1 - 1340 FEET SOUTH AND 20 FEET EAST FROM THE NE CORNER OF THE SENW OF SECTION 25

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	20 E	WM	25	NE NW	5.1
40 S	20 E	WM	25	SE NW	12.5
Total:					17.6

13. The applicant provided further information describing the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	20 E	WM	25	SE NW	POD #1 - SOUTH 45 DEGREES 8 MINUTES 29 SECONDS, 366.62 FEET FROM THE NW CORNER OF SECTION 25

14. Transfer Application T-13364 proposes to move the authorized point of diversion approximately 1368.4 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	20 E	WM	25	SE NE	POD #2 - SOUTH 60 DEGREES 50 MINUTES AND 39 SECONDS, 5032.25 FEET FROM THE NW CORNER OF SECTION 25

15. Transfer Application T-13364 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	20 E	WM	26	NE SE	17.6

16. The fourth right to be transferred is as follows:

Certificate: 41095 in the name of STEVE H AND IRENE M BAILEY (perfected under Permit G-4938)
Use: SUPPLEMENTAL IRRIGATION of 37.6 ACRES
Priority Date: MAY 8, 1970
Rate: 0.47 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 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.acre-feet per acre for each acre irrigated during the irrigation season of each year; provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein
Source: A WELL, a tributary of COGSWELL CREEK (GOOSE LAKE)

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	20 E	WM	25	SW NW	1780 FEET SOUTH AND 240 FEET EAST FROM THE NW CORNER OF SECTION 25

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	20 E	WM	25	NE NE	5.1
40 S	20 E	WM	25	SW NE	10.0
40 S	20 E	WM	25	SE NE	22.5
Total:					37.6

17. Transfer Application T-13364 also proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	20 E	WM	23	SE SE	11.18
40 S	20 E	WM	25	NW NW	1.79
40 S	20 E	WM	26	NE NE	20.56
40 S	20 E	WM	26	SE NE	4.07
Total:					37.60

18. The portion of the fifth right to be transferred is as follows:

Certificate: 62705 in the name of VINCENT 2C RANCH (perfected under Permit G-10603)
Use: IRRIGATION of 12.2 ACRES
Priority Date: APRIL 28, 1986
Rate: 0.15 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-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 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL in the GOOSE LAKE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	20 E	WM	25	SW NW	1780 FEET SOUTH AND 240 FEET EAST FROM THE NW CORNER OF SECTION 25

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	20 E	WM	25	NE NW	0.2
40 S	20 E	WM	25	SW NW	11.9
40 S	20 E	WM	25	SE NW	0.1
Total:					12.2

19. Transfer Application T-13364 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	20 E	WM	25	SW NW	5.25
40 S	20 E	WM	26	SE NE	6.95
Total:					12.20

Transfer Review Criteria (OAR 690-380-4010)

20. Water has been used within the last five years prior to the submittal of Transfer Application T-13364 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.
21. 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-13364.
22. The proposed changes as conditioned would not result in enlargement of the rights.
23. The proposed changes would not result in injury to other water rights.

24. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.
25. All other application requirements are met.

Determination and Proposed Action

The additional points of diversion, change in points of diversion, and change in places of use proposed in Transfer Application T-13364 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.

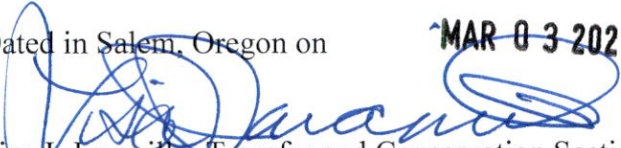
If Transfer Application T-13364 is approved, the final order will include the following:

- 1. The additional points of diversion, changes in points of diversion, and change in places of use proposed in Transfer Application T-13364 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 5276, 7624, 38348, 41095, and 62705 and any related decree.*
- 3. Water right Certificates 5276, 7624, 38348, 41095, and 62705 are cancelled. A new certificate will be issued describing that portion of Certificate 5276 not affected by this Transfer.*
- 4. The quantity of water diverted at the additional points of diversion shall not exceed the quantity of water lawfully available at the original point of diversion..*
- 5. The quantity of water diverted at the new additional points of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
- 6. The former places of use of the transferred rights Certificates 5276, 7624, 38348, 41095, and 62705 shall no longer receive water under the rights.*
- 7. Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.*

8. *Water use measurement conditions:*
- a. *Before water use may begin under this order, the water user shall install a weir or, an instantaneous and totalizing flow meter, or with prior approval of the Director, another suitable measuring device, at each point of diversion (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.*
9. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*
- The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.*
10. *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.*
11. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on

MAR 03 2021


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

This Preliminary Determination was prepared by Joan Smith. If you have questions about the information in this document, you may reach me at 503-986-0892 or Joan.M.Smith@oregon.gov

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

March 3, 2021

VIA E-MAIL

ROBIN L. VINCENT AND
DENAE M. VINCENT
97546 COGSWELL CREEK LN
LAKEVIEW, OR 97630

SUBJECT: Water Right Transfer Application T-13364

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13364. 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 Lake County Examiner 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.

Please do not hesitate to contact me at 503-986-0892 or Joan.M.Smith@oregon.gov if I may be of assistance.

Sincerely,



Joan Smith
Transfer Specialist
Transfer and Conservation Section

cc: T-13364
Brian M. Mayer, District 12 Watermaster (*via e-mail*)
Hollie Cannon, Agent for the applicant (*via e-mail*)

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