

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

| | | |
|---------------------------------------|---|------------------------------|
| In the Matter of Transfer Application |) | PRELIMINARY DETERMINATION |
| T-13390, Lane County |) | PROPOSING APPROVAL OF A |
| |) | CHANGE IN POINT OF DIVERSION |
| |) | AND 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

DOUGLAS R. HENTON
34047 HAMPTON ROAD
EUGENE, OR 97405

Receiving Landowner

GOSHEN FOREST PRODUCTS
34047 HAMPTON RD.
EUGENE, OR 97405

Findings of Fact

1. On March 12, 2020, DOUGLAS R. HENTON filed an application to change the point of diversion and to change the place of use under Certificate 94247. The Department assigned the application number T-13390.
2. Goshen Forest Products is the receiving landowner, however the application indicates both the receiving landowner and applicant will be responsible for completion of the changes.
3. Notice of the application for transfer was published on March 17, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On September 11, 2020, the Department contacted the applicant's agent by written correspondence to notify the agent of deficiencies in the application. An affidavit of consent for tax lot 304 was submitted, however the Lane County Assessor's office identified a different owner. The acres in the "FROM" lands on Table 2 and the application map do not match. The Department requested that the deficiencies be resolved by October 12, 2020.
5. On October 12, 2020, the agent submitted an affidavit of consent identifying the correct landowner, and a revised map, resolving the deficiencies.

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| 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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6. On November 2, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13390 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 7, 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. The portion of the right to be transferred is as follows:

Certificate: 94247 in the name of NORMAN MCDOUGAL (perfected under Permit S-25439)
Use: IRRIGATION of 29.87 ACRES
Priority Date: APRIL 9, 1958
Rate: 0.3734 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: AN UNNAMED STREAM, A TRIBUTARY OF MIDDLE FORK WILLAMETTE RIVER (WILLAMETTE RIVER)

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | GLot | Measured Distances |
|------|-----|-----|-----|-------|------|---|
| 18 S | 2 W | WM | 25 | SW NW | 8 | POD - 2350 FEET SOUTH AND 1820 FEET WEST FROM THE N1/4 CORNER OF SECTION 25 |

Authorized Place of Use:

| IRRIGATION | | | | | | | |
|------------|-----|-----|-----|-------|------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | GLot | DLC | Acres |
| 18 S | 2 W | WM | 25 | NW NW | 1 | | 0.24 |
| 18 S | 2 W | WM | 25 | NW NW | 9 | 52 | 4.64 |
| 18 S | 2 W | WM | 25 | NW NW | 9 | | 2.97 |
| 18 S | 2 W | WM | 25 | NW NW | | | 2.12 |
| 18 S | 2 W | WM | 25 | SW NW | 8 | 52 | 5.60 |
| 18 S | 2 W | WM | 25 | SW NW | 8 | | 2.77 |
| 18 S | 2 W | WM | 25 | SE NW | 2 | | 5.32 |
| 18 S | 2 W | WM | 25 | SE NW | 8 | | 0.44 |
| 18 S | 2 W | WM | 25 | SE NW | | | 0.68 |
| 18 S | 2 W | WM | 25 | NE SW | 7 | | 0.03 |
| 18 S | 2 W | WM | 25 | NE SW | | | 3.16 |
| 18 S | 2 W | WM | 25 | NW SE | 3 | | 1.36 |
| 18 S | 2 W | WM | 25 | NW SE | | | 0.54 |
| Total | | | | | | | 29.87 |

8. Transfer Application T-13390 proposes to move the authorized point of diversion approximately 7.6 miles downstream to:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|------|-----|-----|-----|-------|-----|--|
| 18 S | 2 W | WM | 9 | NE NE | 48 | POD #1 - 1183 FEET SOUTH AND 706 FEET WEST FROM THE NE CORNER OF SECTION 9 |

9. Transfer Application T-13390 also proposes to change the place of use of the right to:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 18 S | 2 W | WM | 9 | NE NE | 48 | 4.55 |
| 18 S | 2 W | WM | 9 | NW NE | 48 | 7.66 |
| 18 S | 2 W | WM | 9 | SW NE | 48 | 4.94 |
| 18 S | 2 W | WM | 9 | SE NE | 48 | 12.72 |
| Total | | | | | | 29.87 |

10. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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 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-13390.
13. The proposed changes would not result in enlargement of the rights.
14. The proposed changes would not result in injury to other water rights.
15. All other application requirements are met.

Determination and Proposed Action

The change in point of diversion and change in place of use proposed in Transfer Application T-13390 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-13390 is approved, the final order will include the following:

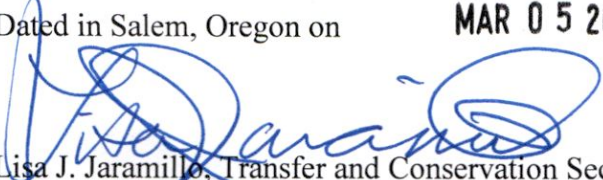
1. *The change in point of diversion and change in place of use proposed in Transfer Application T-13390 are approved.*

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 Certificate 94247 and any related decree.*
3. *Water right Certificate 94247 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the new point of diversion (POD #1), shall not exceed the quantity of water lawfully available at the original point of diversion (POD).*
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 new point of diversion.*
 - 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. *Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*
7. *The former place of use of the transferred right shall no longer receive water under the right.*
8. *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.*

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

Dated in Salem, Oregon on

MAR 05 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
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

March 5, 2021

DOUGLAS R. HENTON
34047 HAMPTON ROAD
EUGENE, OR 97405

SUBJECT: Water Right Transfer Application T-13390

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13390. 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 Eugene Register Guard 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.

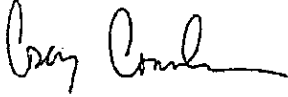
If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

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,



Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-13390
Lanaya F. Blakely, District 2 Watermaster (*via e-mail*)
Steven I. Recca, Agent for the applicant (*via e-mail*)
Goshen Forest Products, Receiving Landowner (*via e-mail*)

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