

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13116, Lane County)	PROPOSING APPROVAL OF
)	ADDITIONAL POINTS OF
)	DIVERSION 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

WALKER AND JENNY SIRNIO, ET. AL.
35056 MATTHEWS RD
EUGENE, OR 97405

Findings of Fact

1. On January 30, 2019, WALKER AND JENNY SIRNIO, ET. AL. filed an application for additional points of appropriation under Certificate 46210. The Department assigned the application number T-13116.
2. Notice of the application for transfer was published on February 5, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 30, 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 all of the signatures from all of the applicants, and there were issues regarding mapping and identification of the acres, involved with the changes

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.

requested in T-13116. The Department requested that the deficiencies be resolved by August 14, 2020.

4. On July 27, 2020, the Department received a revised application and map, and affidavits of Consent by Deeded Landowner, identifying the other applicants. The Department also received affidavits for the voluntary cancellation of a portion of water right Certificate 46210, from Christopher J. Curtis and Christine M. Curtis, Samuel Joseph Harris and Carolyn Ann Harris, Scott A. Russi and Michelle G. Russi, Walker Simio and Jenny Simio, and David F. Whittaker and Misty M. Whittaker.
5. On August 7, 2020 the Department determined upon further review of the revisions and affidavits received on July 27, 2020, still did not satisfy the deficiencies. The acres being affected by the change in T-13116 equals 7.5 acres, which would leave a remaining right of 1.0 acre, being 0.11 acre in the NE NE of Section 30, and 0.89 acre in the SE NE of Section 30. The affidavits are proposing to cancel a total of 1.0 acre in the SE NE, which exceeds the remaining right in that section.
6. On August 18, 2020, the agent submitted a revised Table 2, and on August 21, 2020, the agent submitted a revised application map, correctly identifying the portions of the place of use that are abandoned and being voluntarily cancelled.
7. On September 24, 2020, the applicant submitted revised affidavits, as identified in Finding of Fact 4 above, resolving the deficiencies.
8. On October 8, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-13116 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of November 9, 2020, for the applicants to respond.
9. On November 12, 2020, the applicants took part in an online meeting with the Department and the Oregon Department of Fish and Wildlife, to discuss the denial of T-13116, and the options available.
10. On November 13, 2020, the Department determined a revised draft Preliminary Determination should be issued, as Certificate 46210 is for irrigation March 1 through October 31. The instream water right, Certificate 75625, has a season of use from November to March. The only overlap in period of use is in March, and water availability shows a net of 413.0 cubic feet per second (cfs) available in March, whereas Certificate 75625 is limited to not more than 200.0 cfs.
11. On December 10, 2020, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-13116 to the applicants. The revised draft Preliminary Determination cover letter set forth a deadline of January 11, 2021, 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 applicants are authorized to pursue the transfer.

12. The right to be transferred is as follows:

Certificate: 46210 in the name of DONALD B. MCCARTY (perfected under Permit S-39275)
Use: IRRIGATION of 7.3 ACRES
Priority Date: JULY 3, 1974
Rate: 0.09 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: COAST FORK WILLAMETTE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
18 S	2 W	WM	30	SE NE	82	POD 1 (EXISTING) - 890 FEET NORTH AND 600 FEET WEST FROM THE E1/4 CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
18 S	2 W	WM	30	NE NE	82	0.51
18 S	2 W	WM	30	SE NE	82	6.79
Total						7.30

13. Transfer Application T-13116 proposes additional points of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original point of diversion in feet (ft.)
18 S	2 W	WM	30	SE NE	POD 2 - 1025 FEET NORTH AND 520 FEET WEST FROM THE E1/4 CORNER OF SECTION 30	348.0 ft. downstream
18 S	2 W	WM	30	SE NE	POD 3 - 650 FEET NORTH AND 750 FEET WEST FROM THE E1/4 CORNER OF SECTION 30	397.4 ft. upstream

14. 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)]

15. 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.
16. 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-13116.
17. The proposed change would not result in enlargement of the right.
18. The proposed change would not result in injury to other water rights.
19. On November 13, 2020, the Department determined that instream water right Certificate 75625 would not be injured due to the upstream additional point of diversion. Certificate 75625, which provides required stream flow for migration, spawning, egg incubation, fry emergence, and juvenile rearing, is not in effect April through the middle of November, and the minimum stream flow requirement is met in the month of March. Therefore, the additional point of diversion upstream would not injure Certificate 75625 during the irrigation season, being March 1 through October 1. The Department has determined a revised draft Preliminary Determination should be issued to correct the Department's findings and determinations.
20. All other application requirements are met.

Partial Cancellation of a Water Right

21. On September 24, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Christopher J. Curtis and Christine M. Curtis. The right to be cancelled is as follows:

Certificate: 46210 in the name of DONALD B. MCCARTY (perfected under Permit S-39275)
Use: IRRIGATION of 0.18 ACRE
Priority Date: JULY 3, 1974
Rate: 0.002 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: COAST FORK WILLAMETTE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
18 S	2 W	WM	30	SE NE	82	POD 1 (EXISTING) - 890 FEET NORTH AND 600 FEET WEST FROM THE E1/4 CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q - Q	DLC	Tax Lot	Acres
18 S	2 W	WM	30	SE NE	82	300	0.18

22. On September 24, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Samuel Joseph Harris and Carolyn Ann Harris. The right to be cancelled is as follows:

Certificate: 46210 in the name of DONALD B. MCCARTY (perfected under Permit S-39275)

Use: IRRIGATION of 0.23 ACRE

Priority Date: JULY 3, 1974

Rate: 0.003 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-eighthieth 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: COAST FORK WILLAMETTE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
18 S	2 W	WM	30	SE NE	82	POD 1 (EXISTING) - 890 FEET NORTH AND 600 FEET WEST FROM THE E1/4 CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q - Q	DLC	Tax Lot	Acres
18 S	2 W	WM	30	SE NE	82	400	0.23

23. On September 24, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Scott A. Russi and Michelle G. Russi. The right to be cancelled is as follows:

Certificate: 46210 in the name of DONALD B. MCCARTY (perfected under Permit S-39275)

Use: IRRIGATION of 0.26 ACRE

Priority Date: JULY 3, 1974

Rate: 0.003 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-eighthieth 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: COAST FORK WILLAMETTE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
18 S	2 W	WM	30	SE NE	82	POD 1 (EXISTING) - 890 FEET NORTH AND 600 FEET WEST FROM THE E1/4 CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q - Q	DLC	Tax Lot	Acres
18 S	2 W	WM	30	SE NE	82	500	0.26

24. On September 24, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Walker Sirnio and Jenny Sirnio. The right to be cancelled is as follows:

Certificate: 46210 in the name of DONALD B. MCCARTY (perfected under Permit S-39275)

Use: IRRIGATION of 0.14 ACRE

Priority Date: JULY 3, 1974

Rate: 0.002 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-eighth 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: COAST FORK WILLAMETTE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
18 S	2 W	WM	30	SE NE	82	POD 1 (EXISTING) - 890 FEET NORTH AND 600 FEET WEST FROM THE E1/4 CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q - Q	DLC	Tax Lot	Acres
18 S	2 W	WM	30	SE NE	82	200	0.01
18 S	2 W	WM	30	SE NE	82	200	0.13
Total							0.14

25. On September 24, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from David F. Whittaker and Misty M. Whittaker. The right to be cancelled is as follows:

Certificate: 46210 in the name of DONALD B. MCCARTY (perfected under Permit S-39275)

Use: IRRIGATION of 0.39 ACRE

Priority Date: JULY 3, 1974

Rate: 0.005 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: COAST FORK WILLAMETTE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
18 S	2 W	WM	30	SE NE	82	POD 1 (EXISTING) - 890 FEET NORTH AND 600 FEET WEST FROM THE E1/4 CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q - Q	DLC	Tax Lot	Acres
18 S	2 W	WM	30	SE NE	82	100	0.08
18 S	2 W	WM	30	SE NE	82	100	0.31
Total							0.39

Determination and Proposed Action

The additional points of diversion proposed in Transfer Application T-13116 appear 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-13116 is approved, the final order will include the following:

1. *The additional points of diversion proposed in Transfer Application T-13116 are approved. The portions of the right that has been abandoned are 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 46210 and any related decree.*
3. *Water right Certificate 46210 is cancelled.*

4. *The quantity of water diverted at the new additional points of diversion (POD 2 and 3), together with that diverted at the original point of diversion (POD 1 (Existing)), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 1 (Existing)).*
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 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.*
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. *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 change 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

MAR 18 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 , 2021

WALKER AND JENNY SIRNIO, ET. AL.
35056 MATTHEWS RD
EUGENE, OR 97405

SUBJECT: Water Right Transfer Application T-13116

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13116. 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, 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 Department's notice.

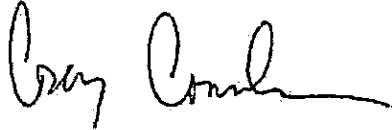
If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

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 black ink, appearing to read "Corey Courchane". The signature is fluid and cursive, with a long horizontal stroke at the end.

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-13116
Lanaya F. Blakely, District 2 Watermaster (*via e-mail*)
Poage Engineering And Surveying Inc., Agent for the applicant (*via e-mail*)

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