

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

In the Matter of Transfer Application
T-13534, Benton County

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R E V I S E D

PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A
CHANGE IN 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

JOSEPH CLINTON MONFALCONE
ESTI SLABBERT MONFALCONE
24704 ALPINE RD
MONROE, OR 97456

Findings of Fact

1. On September 30, 2020, SPIES REAL ESTATE GROUP LLC filed an application for a change in place of use under Certificate 24311. The Department assigned the application number T-13534.
2. Notice of the application for transfer was published on October 13, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 5, 2021, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13534 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 7, 2021, 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.
4. On February 8, 2021 the agent for the applicant requested the completion date of October 1, 2026 to allow for the completion of concurrent application R-88888 that would affect this transfer. The Department granted the longer time for completion per OAR 690-380-5140 (3).

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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5. On March 22, 2021, the Department approved an assignment of transfer application T-13534 to Joseph Clinton Monfalcone and Esti Slabbert Monfalcone. The assignment was recorded in the records of the Water Resources Department in Salem.
6. On April 7, 2021 the Department issued a Preliminary Determination proposing to approve Transfer Application T-13534 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on April 13, 2021, pursuant to ORS 540.520 and OAR 690-380-4020.
7. On April 9, 2021, the Department identified a scrivener's error in the completion date of the Preliminary Determination. The agent had requested a longer completion date in FOF # 4. Consequently, the Department determined a revised Preliminary Determination shall be issued to identify the correct transfer completion date.
8. The portion of the right to be transferred is as follows:

Certificate: 24311 in the name of J. E. LARKIN (perfected under Permit S-20350)
Use: IRRIGATION of 2.0 ACRES
Priority Date: MAY 18, 1951
Rate: 0.025 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: HAMMER CREEK, a tributary of MARYS RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q
14 S	6 W	WM	26	NE SW
14 S	6 W	WM	26	NW SE

Authorized Place of Use:

IRRIGATION HAMMER CREEK						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
14 S	6 W	WM	26	NE SW	48	0.3
14 S	6 W	WM	26	NW SE	48	1.7
					Total	2.0

9. Transfer Application T-13534 proposes to change the place of use of the right to:

IRRIGATION HAMMER CREEK						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
14 S	6 W	WM	26	SW NE	48	2.0

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

10. 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.
11. 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-13534.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.
14. All other application requirements are met.

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-13534 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-13534 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-13534 is 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 24311 and any related decree.*
3. *Water right Certificate 24311 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *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.*
 - 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.*
5. *The former place of use of the transferred right shall no longer receive water under the right.*

6. *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 change and full beneficial use of the water.*
7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on

MAY 05 2021



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

This revised Preliminary Determination was prepared by Scott Grew. If you have questions about the information in this document, you may reach him at scott.a.grew@oregon.gov or 503-986-0890.

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.