

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13425, Clackamas County)	PROPOSING APPROVAL OF
)	CHANGES IN POINTS OF
)	APPROPRIATION, ADDITIONAL
)	POINTS OF APPROPRIATION 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

STEPHEN A. KOCH
27815 S ELISHA RD
CANBY, OR 97013

Findings of Fact

1. On April 20, 2020, STEPHEN A. KOCH filed an application for additional points of appropriation under Certificates 51320, 52594, and 94707, for a change place of use under Certificates 68116 and 94707 and for a change in point of appropriation under Certificate 68116. The Department assigned the application number T-13425.
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 March 17, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13425 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 19, 2021, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination, provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer, and requested additional time to complete 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 first right to be transferred is as follows:

Certificate: 51320 in the name of RUFUS KRAXBERGER (perfected under Permit G-4378)

Use: IRRIGATION of 47.4 ACRES

Priority Date: OCTOBER 22, 1968

Rate: 0.59 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: A WELL a tributary of MOLALLA RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 E	WM	24	SE SW	1250 FEET NORTH AND 1950 FEET EAST FROM THE SW CORNER OF SECTION 24

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 E	WM	24	NE SW	38.4
4 S	1 E	WM	24	SE SW	9.0
Total					47.4

5. Transfer Application T-13425 proposes additional points of appropriation with approximate distances in feet from the existing point of appropriation (Well 1) to:

Twp	Rng	Mer	Sec	Q-Q	Gov Lot	Measured Distances	Approximate distance from existing well
4 S	1 E	WM	23	SE SE		WELL 3 (CLAC 61795) – 1040 FEET NORTH AND 200 FEET WEST FROM THE SE CORNER OF SECTION 23	2140.3
4 S	1 E	WM	24	NW NW		WELL 4 – 1160 FEET SOUTH AND 160 FEET EAST FROM THE NW CORNER OF SECTION 24	3315.6
4 S	1 E	WM	24	SW SE	Lot 2	WELL 2 (CLAC 12469) – 1210 FEET SOUTH AND 430 FEET EAST FROM THE SW CORNER OF DLC 46	1678.6

6. The second right to be transferred is as follows:

Certificate: 52594 in the name of JESSIE M. KOCH (perfected under Permit G-7050)

Use: IRRIGATION of 54.6 ACRES

Priority Date: NOVEMBER 22, 1976

Rate: 0.68 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: KOCH WELL No.1, a tributary of DOVE CREEK

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	G-lot	Measured Distances
4 S	1 E	WM	24	SW SE	2	KOCH WELL No. 1-1210 FEET SOUTH AND 430 FEET EAST FROM THE SW CORNER OF KLINGER DLC 46

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
4 S	1 E	WM	24	SE SW		0.4
4 S	1 E	WM	24	SW SE	2	31.4
4 S	1 E	WM	25	NE NW		22.8
Total						54.6

7. Transfer Application T-13425 proposes additional points of appropriation with approximate distances in feet from the existing point of appropriation (Koch Well No. 1, aka Well 2) to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from existing well
4 S	1 E	WM	23	SE SE	WELL 3 (CLAC 61795) – 1040 FEET NORTH AND 200 FEET WEST FROM THE SE CORNER OF SECTION 23	3427.9
4 S	1 E	WM	24	NW NW	WELL 4 – 1160 FEET SOUTH AND 160 FEET EAST FROM THE NW CORNER OF SECTION 24	5012.7
4 S	1 E	WM	24	SE SW	WELL 1 (CLAC 12500) – 1250 FEET NORTH AND 1950 FEET EAST FROM THE SW CORNER OF SECTION 24	1678.6

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

Certificate: 68116 in the name of WALTER BERNKLAU (perfected under Permit G-2705)
Use: IRRIGATION of 9.3 ACRES
Priority Date: JUNE 17, 1964
Rate: 0.115 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.
Source: A WELL in the GRIBBLE CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 E	WM	24	NW SW	370 FEET SOUTH AND 160 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 24

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 E	WM	24	NW SW	9.3

9. Transfer Application T-13425 proposes to move the authorized point of appropriation with approximate distances in feet from the existing point of appropriation (WELL) to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from existing well
4 S	1 E	WM	23	SE SE	WELL 3 (CLAC 61795) – 1040 FEET NORTH AND 200 FEET WEST FROM THE SE CORNER OF SECTION 23	1281.6
4 S	1 E	WM	24	NW NW	WELL 4 – 1160 FEET SOUTH AND 160 FEET EAST FROM THE NW CORNER OF SECTION 24	1852.2
4 S	1 E	WM	24	SE SW	WELL 1 (CLAC 12500) – 1250 FEET NORTH AND 1950 FEET EAST FROM THE SW CORNER OF SECTION 24	1991.8
4 S	1 E	WM	24	SW SE	WELL 2 (CLAC 12469) – 1210 FEET SOUTH AND 430 FEET EAST FROM THE SW CORNER OF DLC 46	3656.9

10. Transfer Application T-13425 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 E	WM	24	SW NW	1.6
4 S	1 E	WM	24	SW NW	2.4
4 S	1 E	WM	24	NW SW	5.3
Total					9.3

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

Certificate: 94707 in the name of STEPHEN A. KOCH (perfected under Permit G-11754)
Use: IRRIGATION of 105.8 ACRES
Priority Date: FEBRUARY 9, 1990 FOR 497 GALLONS PER MINUTE (GPM), AND DECEMBER 19, 1991 FOR 97 GPM
Rate: 594 GALLONS PER MINUTE
Season of Use: MARCH 1 THROUGH OCTOBER 31
Limit/Duty: The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.
Source: WELLS 1 AND 2 in the MOLALLA RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	G-lot	Measured Distances
4 S	1 E	WM	24	SE SW		WELL 1 - 1250 FEET NORTH AND 1950 FEET EAST FROM THE SW CORNER OF SECTION 24
4 S	1 E	WM	24	SW SE	2	WELL 2 - 1210 FEET SOUTH AND 430 FEET EAST FROM THE SW CORNER OF DLC 46

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 E	WM	23	SE SE	7.3
4 S	1 E	WM	24	NW SW	22.3
4 S	1 E	WM	24	SW SW	10.0
4 S	1 E	WM	24	SE SW	26.6
4 S	1 E	WM	25	SW NW	6.6
4 S	1 E	WM	25	SE NW	33.0
Total					105.8

12. Transfer Application T-13425 proposes additional points of appropriation with approximate distances in feet from the existing points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from existing wells	
						WELL 1	WELL 2
4 S	1 E	WM	23	SE SE	WELL 3 (CLAC 61795) - 1040 FEET NORTH AND 200 FEET WEST FROM THE SE CORNER OF SECTION 23	2140.3	3427.9
4 S	1 E	WM	24	NW NW	WELL 4 - 1160 FEET SOUTH AND 160 FEET EAST FROM THE NW CORNER OF SECTION 24	3315.6	5012.7

13. Transfer Application T-13425 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 E	WM	24	SW NW	28.1
4 S	1 E	WM	24	SW NW	2.4
4 S	1 E	WM	24	SW SW	9.6
4 S	1 E	WM	24	SE SW	26.6
4 S	1 E	WM	25	SW NW	6.1
4 S	1 E	WM	25	SE NW	33.0
Total					105.8

Transfer Review Criteria (OAR 690-380-4010)

- 14. Water has been used within the last five years prior to the submittal of Transfer Application T-13425 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.
- 15. 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-13425.
- 16. The proposed change would not result in enlargement of the rights.
- 17. The proposed change would not result in injury to other water rights.
- 18. All other application requirements are met.

Determination and Proposed Action

The change in point of appropriation, additional points of appropriation and change in place of use proposed in Transfer Application T-13425 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-13425 is approved, the final order will include the following:

- 1. *The change in point of appropriation, additional points of appropriation and change in places of use proposed in Transfer Application T-13425 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 51320, 52594, 68116, and 94707 and any related decree.*
- 3. *Water right Certificates 51320, 52594, 68116, and 94707 are cancelled. A new certificate will be issued describing that portion of Certificate 68116 not affected by this transfer.*
- 4. *The quantity of water diverted at the additional points of appropriation (Wells 1, 2, 3, and 4), together with that diverted at the original points of appropriation (Wells 1, 2, 3, Koch*

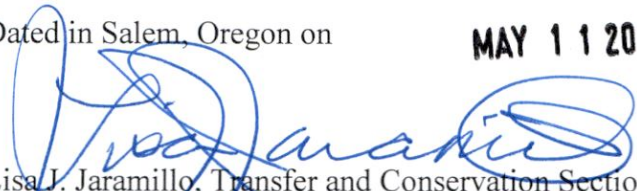
Well 1, a Well, and Well 4), shall not exceed the quantity of water lawfully available at the original points of appropriation (Wells 1, 2, a Well, and Koch Well #1).

5. *The quantity of water diverted at the new point of appropriation (Well 4), together with that diverted at the original points of appropriation (Wells 1, 2, 3, Koch Well 1, a Well, and Well 4), shall not exceed the quantity of water lawfully available at the original points of appropriation (Wells 1, 2, a Well, and Koch Well #1).*
6. *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 appropriation (new and existing).*
 - b. *The water user shall maintain the meter(s) or measuring device(s) in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter(s) or measuring device(s); provided however, where the meter(s) or measuring device(s) are located within a private structure, the Watermaster shall request access upon reasonable notice.*
7. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
8. *The former place of use of the transferred rights Certificates 68116 and 94707 shall no longer receive water under the rights.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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.*

10. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated in Salem, Oregon on

MAY 11 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

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 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

May 11, 2021

VIA E-MAIL

STEPHEN A. KOCH
27815 S ELISHA RD
CANBY, OR 97013

SUBJECT: Water Right Transfer Application T-13425

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13425. 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 Canby Herald 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@ wrd.state.or.us if I may be of assistance.

Sincerely,

Joan Smith
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application File T-13425
Amy J. Landvoigt, District 20 Watermaster (*via e-mail*)
Doann Hamilton, Agent for the applicant (*via e-mail*)

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