

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13301, Linn County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF DIVERSION
)	AND PARTIAL CANCELLATION OF
)	A WATER RIGHT

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

ERIC M. AND LAURA R. POND
39303 PLAGMAN DR.
LEBANON, OR 97355

Findings of Fact

1. On December 6, 2019, ERIC M. AND LAURA R. POND filed an application to change the point of diversion under Certificate 49788. The Department assigned the application number T-13301.
2. Notice of the application for transfer was published on December 17, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 21, 2020, the Agent for the applicant amended the application and submitted an affidavit for the voluntary cancellation of a portion of the right (0.3 acre).
4. On February 18, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13301 to the applicants). The draft Preliminary Determination cover letter set forth a deadline of March 18, 2021, for the applicants to respond. The applicant(s) 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.

5. The right to be transferred is as follows:

Certificate: 49788 in the name of CARL A. PLAGMANN (perfected under Permit S-28481)
Use: IRRIGATION of 7.3 ACRES
Priority Date: NOVEMBER 8, 1962
Rate: 0.089 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: SOUTH SANTIAM RIVER a tributary of SANTIAM RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
12 S	1 W	WM	29	NW NE	57	30 FEET SOUTH AND 2000 FEET WEST FROM THE NE CORNER OF SECTION 29

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
12 S	1 W	WM	20	SE SE	57	2.6
12 S	1 W	WM	29	NE NE	57	4.7
Total:						7.3

6. Transfer Application T-13301 proposes to move the authorized point of diversion approximately 1679.3 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	1 W	WM	29	NE NE	POD 2 - 930 FEET SOUTH AND 580 FEET WEST FROM THE NE CORNER OF SECTION 29

7. 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.

Partial Cancellation of a Water Right

8. On April 21, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from the applicant. The right to be cancelled is as follows:

Certificate: 49788 in the name of CARL A. PLAGMANN (perfected under Permit S-28481)
Use: IRRIGATION 0.30 ACRE
Priority Date: NOVEMBER 8, 1962

Rate: 0.004 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: SOUTH SANTIAM RIVER, tributary of SANTIAM RIVER.

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	1 W	WM	29	NW NE	30 FEET SOUTH AND 2000 FEET WEST FROM NE CORNER, SECTION 29

Authorized Place of Use to be Cancelled:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
12 S	1 W	WM	29	NE NE	57	0.30

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

9. 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.
10. 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-13301.
11. The proposed change as conditioned would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

Determination and Proposed Action

The change in point of diversion proposed in Transfer Application T-13301 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, and the portion of the right abandoned will be cancelled.

If Transfer Application T-13301 is approved, the final order will include the following:

1. *The change in point of diversion proposed in Transfer Application T-13301 is approved, and the portion of the right abandoned is 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 49788 and any related decree.*

3. *Water right Certificate 49788 is cancelled.*
4. *The quantity of water diverted at the new point of diversion (POD 2), shall not exceed the quantity of water lawfully available at the original point of diversion.*
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.*
 - 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 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.

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

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.

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

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Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

May 11, 2021

VIA E-MAIL

ERIC M. AND LAURA R. POND
39303 PLAGMAN DR.
LEBANON, OR 97355

SUBJECT: Water Right Transfer Application T-13301

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13301. 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 Sweet Home 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 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: T-13301
Lanaya F. Blakely, District 2 Watermaster (via e-mail)
William E. McGill, Agent for the applicant (via e-mail)

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