



# Oregon

Kate Brown, Governor

**Water Resources Department**  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
Fax (503) 986-0904

June 14, 2021

THE TREE FARM LLC  
409 FRANKLIN AVE.  
BEND, OR 97703

**SUBJECT:** Water Right Transfer Application T-13583

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13583. 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 Bend Bulletin 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.

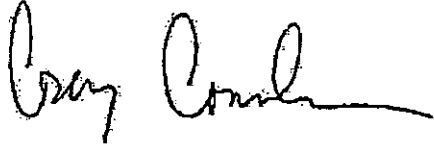
If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

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](mailto: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: Transfer Application file T-13583  
Jeremy T. Giffin, District 11 Watermaster *(via e-mail)*  
Adam Sussman, Agent for the applicant *(via e-mail)*

Commenters:

Todd Van der Zwiep  
Erika Lindquist  
63360 Fawn Lane  
Bend, OR 97703-8574

Mark McDowell  
63410 Fawn Ln  
Bend, OR 97703

Janet E. Neuman, Tonkon Torp LLP *(via e-mail)*

encs

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13583, Deschutes County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF
	)	APPROPRIATION AND PLACE 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**

THE TREE FARM LLC  
409 FRANKLIN AVE.  
BEND, OR 97703

**Findings of Fact**

1. On December 24, 2020, THE TREE FARM LLC filed an application to change the point of appropriation and to change the place of use under Certificate 94958. The Department assigned the application number T-13583.
2. Notice of the application for transfer was published on January 5, 2021, pursuant to OAR 690-380-4000. Three timely comments were filed in response to the notice. The issues raised by the comments included:
  - a) The proposed application has the potential to injure nearby wells already providing water to the community through Klippel Water Inc.;
  - b) Sufficient domestic water is already being provided by Klippel Water Inc., and the use of water that would be authorized by T-13583 would be wasteful and would enlarge the use of water appropriated from the local aquifer,
  - c) Sufficient water for irrigation is already being provided by Tumalo Irrigation District, and another water provider is not necessary; and

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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- d) The amount of water available from the aquifer cannot reasonably be considered sufficient for all current users, as well additional use for the applicant through T-13583.
3. Not all the issues raised by the commenters address the criteria for review of a water right transfer as per OAR 690-380-4010 and approval of a transfer application under OAR 690-380-5000. Some of the comments described in Finding of Fact (FOF) #2 raise public interest issues. Under Oregon Law, water right transfers are not subject to a public interest review. Rather, the statutory basis for approving a water right transfer application is relatively narrow and confined to the department finding or determining:
  - a) The proposed transfer would not result in enlargement of the water right proposed for transfer; and
  - b) The proposed transfer would not result in injury to other water rights.
4. The Department completed a Groundwater Injury Review for Transfer T-13583 on March 12, 2021. The results of this review indicated:
  - a) The proposed point of appropriation (POA) will develop the same aquifer (source) as the existing authorized POA;
  - b) The proposed changes, at the maximum allowed rate of use, would not result in another groundwater right not receiving the water to which it is legally entitled; and
  - c) The proposed changes, at the maximum allowed rate of use, would not result in an increase in interference with another surface water source.
5. On March 15, 2021, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of a deficiency in the application. The Department determined a Supplemental Form D is required, as the proposed place of use is located within the boundaries of the Tumalo Irrigation District. The Department requested that the deficiencies be resolved by April 16, 2021.
6. On March 18, 2021, the agent submitted a Supplemental Form D on behalf of the applicant, resolving the deficiency.
7. On March 18, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13583 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 and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
8. On March 25, 2021, the applicant's agent requested to extend the date to complete full beneficial use of the water to October 1, 2025, due to the amount of work needed to complete the changes.

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

**Certificate:** 94958 in the name of THE TREE FARM LLC (perfected under Permit G-13017)  
**Use:** QUASI-MUNICIPAL  
**Priority Date:** JANUARY 30, 1995  
**Rate:** 0.23 CUBIC FOOT PER SECOND  
**Period of Use:** YEAR ROUND  
**Source:** A WELL within the DESCHUTES BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	11 E	WM	35	NW SE	TREE FARM WELL - 1560 FEET NORTH AND 2465 FEET WEST FROM THE SE CORNER OF SECTION 35

**Authorized Place of Use:**

QUASI-MUNICIPAL				
Twp	Rng	Mer	Sec	Q-Q
17 S	11 E	WM	35	SW NE
17 S	11 E	WM	35	SE NE
17 S	11 E	WM	35	SE NW
17 S	11 E	WM	35	NE SW
17 S	11 E	WM	35	NW SW
17 S	11 E	WM	35	SW SW
17 S	11 E	WM	35	SE SW
17 S	11 E	WM	35	NE SE
17 S	11 E	WM	35	NW SE
17 S	11 E	WM	35	SW SE
17 S	11 E	WM	36	SW NW

10. Transfer Application T-13583 proposes to move the authorized point of appropriation approximately 3.5 miles NE from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	11 E	WM	13	SW NW	WELL 1 - 1490 FEET SOUTH AND 1350 FEET WEST FROM THE N1/4 CORNER OF SECTION 13

11. Transfer Application T-13583 also proposes to change the place of use of the right to:

QUASI-MUNICIPAL				
Twp	Rng	Mer	Sec	Q-Q
17 S	11 E	WM	13	NW NE
17 S	11 E	WM	13	NE NW
17 S	11 E	WM	13	SW NW
17 S	11 E	WM	13	SE NW
17 S	11 E	WM	13	NE SW
17 S	11 E	WM	13	NW SW

***Transfer Review Criteria (OAR 690-380-4010)***

12. 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.
13. A pump, pipeline, and distribution 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-13583.
14. The proposed changes, as conditioned, would not result in enlargement of the right.
15. The proposed changes would not result in injury to other water rights.
16. All other application requirements are met.

**Determination and Proposed Action**

The change in point of appropriation and change in place of use proposed in Transfer Application T-13583, as conditioned, appears 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.

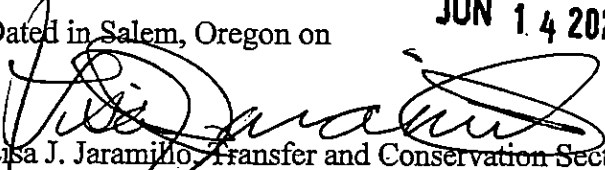
*If Transfer Application T-13583 is approved, the final order will include the following:*

1. *The change in point of appropriation and change in place of use proposed in Transfer Application T-13583 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 94958 and any related decree.*
3. *Water right Certificate 94958 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 appropriation (Well 1), shall not exceed the quantity of water lawfully available at the original point of appropriation (Tree Farm Well).*

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 appropriation, with the exception that water rights issued to the Bureau of Reclamation or an irrigation district (or similar entity) are not subject to this condition.*
  - 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. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2025**. 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.*
8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on

JUN 14 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](mailto: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.*

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**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.