



# Oregon

Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

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June 14, 2021

VIA E-MAIL

JOHN AND LINDA VANDREE  
TRUSTEES OF REVOCABLE TRUST-SEPT 1998  
812 GRAND AVE  
EVERETT, WA 98201

SUBJECT: Water Right Transfer Application T-13369

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13369. 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 503-986-0892 or [Joan.M.Smith@ wrd.state.or.us](mailto: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-13369  
Gregory M. Silbernagel, District 5 Watermaster (*via e-mail*)  
Jason Melady, Agent for the applicant (*via e-mail*)

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13369, Umatilla County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINTS OF
	)	APPROPRIATION AND PARTIAL
	)	DIMINUTION OF CERTAIN WATER
	)	RIGHTS

**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**

JOHN AND LINDA VANDREE,  
TRUSTEES REVOCABLE LIVING TRUST  
OF JOHN C. VANDREE AND  
LINDA K. VANDREE, 1998  
812 GRAND AVENUE  
EVERETT, WASHINGTON 98201

**Agent**

JASON MELADY, CWRE  
GSI WATER SOLUTIONS, INC.  
55 SW YAMHILL ST., SUITE 300  
PORTLAND, OR 97204

**Findings of Fact**

1. On February 14, 2020, John and Linda Vandree filed an application to change the point of appropriation n under a portion of Certificate 89896. The Department assigned the application number T-13369.
2. Notice of the application for transfer was published on February 25, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 9, 2020, the Department sent a letter to the applicant addressing multiple issues including the need to amend the application to include an additional layered right, multiple stacked primaries and mapping errors. The letter set forth a deadline of November 8, 2020, for the applicant to respond.

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. On December 7, 2020, the agent for the applicant requested an additional 14 days to address the mapping problems and to complete the transfer and submit the needed items requested. The Department approved an additional 14 days in which to complete the needed revisions and gave the applicant until December 21, 2020, to submit the items necessary to continue processing the application.
5. On December 24, 2020, the agent for the applicant submitted a revised application and associated map amending the application to include a change in point of appropriation for Certificate 30638 and submitted the appropriate filing fees. This revision remedies a conflict with an existing right that was revealed in the Department's initial review.
6. On February 12, 2021, the applicant submitted a revised application amending the place of use for Certificate 89896.
7. Also on February 12, 2021, the applicant submitted two voluntary diminution affidavits to diminish portions of Certificates 89896 and 30638 from primary irrigation to supplemental irrigation. The revisions and diminishment affidavits together resolve the multiple stacked primary water right issues noted in the Department's October 9, 2020, letter to the applicant. See Findings of Fact #23 and 24 below for further details on the diminutions.
8. On February 16, 2021, the Department issued a Draft Preliminary determination proposing to approve Transfer Application T-13369; following the issuance of the Draft Preliminary Determination for T-13369 the Department received a request from the applicant to extend the time to develop the proposed well to October 1, 2027.
9. The applicant also requested that the new wells' conditions be amended, to include language that give the applicants additional and more feasible guidance to attain compliance with the Departments' requirements.
10. On April 20, 2021, the Department issued a Revised Draft Preliminary Determination amending the conditions and allowing extra time for the applicants to develop the well in accordance with the Departments revised conditions. The applicant was given 30 days to respond to the Revised Draft Preliminary Determination, the applicant accepted the revised conditions and requested the Department proceed with the Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
11. The portion of the first right to be transferred is as follows:
  - Certificate:** 89896 in the name of T. O. WILLIAMS & ASSOCIATES (C/O) RAY WILLIAMS; JOHN C. & LINDA K. VANDREE (perfected under Permit G-13697)
  - Use:** IRRIGATION of 42.8 ACRES and SUPPLEMENTAL IRRIGATION of 115.4 ACRES
  - Priority Date:** APRIL 20, 1998
  - Rate:** 0.497 CUBIC FOOT PER SECOND (cfs) for PRIMARY IRRIGATION OF 42.8 ACRES, 0.09 CFS for SUPPLEMENTAL IRRIGATION OF 115.4 ACRES to make up a deficiency in rate from the Basalt aquifer
  - Period of Use:** March 1 through October 31

**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 3.0 ACRE-FEET per acre for each acre irrigated during the irrigation season of each year.

**Source:** WILLIAMS WELL 4 within the SWARTZ SPRING CREEK and PINE CREEK BASINS

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
6 N	34 E	WM	35	NE* NW	WILLIAMS WELL 4 (UMAT 4177/ BASALT) 1290 FEET SOUTH AND 1710 FEET EAST FROM NW CORNER OF SECTION 35

\* Note: a scrivener's error was found in the POA description for Williams Well #4. See finding #10 below for correction.

**Authorized Places of Use:**

PRIMARY IRRIGATION (IR)					
Twp	Rng	Mer	Sec	Q - Q	Acres
6 N	34 E	WM	26	SE SW	11.8
6 N	34 E	WM	26	SW SE	27.5
6 N	34 E	WM	35	NW NE	3.5
TOTAL:					42.8

\* Note: a portion of the above described 42.8 acres is requested to be diminished to supplemental irrigation to existing Hudson Bay District Improvement Company primary rights. See Finding #23 below.

SUPPLEMENTAL IRRIGATION FROM BASALT AQUIFER TO MAKE UP A DEFICIENCY IN RATE					
Twp	Rng	Mer	Sec	Q - Q	Acres
6 N	34 E	WM	26	SE SW	25.2
6 N	34 E	WM	26	SW SE	12.5
6 N	34 E	WM	35	NW NE	37.1
6 N	34 E	WM	35	NE NW	40.6
TOTAL:					115.4

12. Transfer Application T-13369 proposes to change the point of appropriation for the above described acres East approximately 110 feet to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
6 N	34 E	WM	35	NE NW	VANDREE WELL 1 - 1290 FEET SOUTH AND 1760 FEET EAST FROM NW CORNER OF SECTION 35

13. Certificate 89896 contains a scrivener's error in its quarter-quarter description for the point of appropriation (POA) for Williams Well #4 described above in Finding #10. The certificate incorrectly lists the quarter-quarter as the SE $\frac{1}{4}$  NW $\frac{1}{4}$  within Section 35. Based on the Claim of Beneficial Use map for Certificate 89896 and the applicant's Certified Water Rights Examiner's current map (Cook/2020) based on a recent field visit, the Department is led to conclude that Certificate 89896 should be corrected to reflect the correct quarter-quarter description within the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , Section 35.

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

**Certificate:** 30638 in the name of L.M. MARLATT (perfected under Permit G-464)

**Use:** IRRIGATION of 108.02 ACRES

**Rate:** 1.24 CUBIC FEET 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, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 ACRE-FEET per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL (*aka* -WILLIAMS WELL #4) within the PINE CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
6 N	34 E	WM	35	NE NW	20½ CHAINS SOUTH AND 25 CHAINS EAST FROM THE NW CORNER OF SECTION 35

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
6 N	34 E	WM	26	SE SW	17.82
6 N	34 E	WM	26	SW SE	12.50
6 N	34 E	WM	35	NW NE	37.10
6 N	34 E	WM	35	NE NW	40.60
TOTAL:					108.02

\* **Note:** a portion of the above described 108.02 acres is requested to be diminished to supplemental irrigation to existing Hudson Bay District Improvement Company primary rights. See Finding #25 below.

15. Transfer Application T-13369 proposes to change the point of appropriation east approximately 110 feet to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
6 N	34 E	WM	35	NE NW	VANDREE WELL 1 - 1290 FEET SOUTH AND 1760 FEET EAST FROM NW CORNER OF SECTION 35

16. The Department has determined that four primary water rights exist on the lands identified in this transfer, causing them to be "layered rights" under Oregon Administrative rule OAR 690-380-2240. However, the Department shall consider the right with the oldest priority date as the primary water right unless the landowner/applicant designates otherwise (OAR 690-380-5120). All other rights shall be diminished to supplemental water rights. The applicant has submitted voluntary diminution affidavits for portions of Certificates 89896 and 30638 which remedies the conflicts and are further described below in Findings #24 and #25.

17. The diminishment and proposed use of water for supplemental irrigation under Certificates 89896 and 30638 together with the existing water right Certificates 83953, 93399 and 83956 and shall be limited to an appropriation of no more than the allowable rate and duty per each acre as specified as follows:

Certificate#	Amount of water authorized in each Certificate	Acres under Vandree lands
30638	1.33 cfs for 115.6 acres - <i>(0.0115 cfs per acre per growing season)</i>	108.02 @ 1.24 cfs
89896	PRIMARY IRRIGATION (IR) - 2.77 cfs for 238.4 ac. <i>(0.0116 cfs per acre per growing season)</i> SUPPLEMENTAL IRRIGATION (IS) for a deficiency from Basalt Aquifer – 0.338 cfs for 433.0 acres <i>(0.0008 cfs per acre per growing season)</i>	<u>Primary:</u> 42.8 acres @ 0.497 cfs <u>Suppl. Irr.:</u> 115.4 acres @ 0.09 cfs

18. The portions of water right Certificates 89896 and 30638 proposed for transfer appropriate water by means of a common well (Williams Well #4) that is not capable of simultaneously supplying water to the rest of the original permit G-13697 (Certificate 89896) when the Department approved the proof of beneficial use under the right. Consequently, this right carries a condition that further limits what can be appropriated under the right to an aggregate total of what specifically can be appropriated from the basalt aquifer. That portion of Certificate 89896 not modified by the transfer will continue to carry the condition that together limits them to the capacity of the other original wells at the time of perfection of the permit.

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

19. Water has been used within the last five years prior to the submittal of Transfer Application T-13369 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.
20. A well, 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-13369.
21. The proposed change as conditioned would not result in enlargement of the rights.
22. The proposed change as conditioned would not result in injury to other water rights.
23. All other application requirements are met.

***Partial Diminishment of a Water Right***

24. On February 12, 2021, the applicant submitted an affidavit for the partial diminishment of water right Certificate 89896. The following portion of an irrigation right is appurtenant to the same lands as the authorized place of use under existing Hudson Bay Improvement District Co. water right Certificates 83953, 83956, and 93399. The portion of the irrigation right to be diminished to supplemental irrigation is as follows:

**Certificate:** 89896 in the name of T. O. WILLIAMS & ASSOCIATES (C/O) RAY WILLIAMS; JOHN C. & LINDA K. VANDREE (perfected under Permit G-13697)

**Use:** IRRIGATION of 37.95 ACRES

**Priority Date:** APRIL 20, 1998

**Rate:** 0.441 cfs

**Period of Use:** March 1 through October 31

**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 3.0 ACRE-FEET per acre for each acre irrigated during the irrigation season of each year.

**Source:** WILLIAMS WELL 4 within the SWARTZ SPRING CREEK and PINE CREEK BASINS

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
6 N	34 E	WM	35	NE NW	WILLIAMS WELL 4 (UMAT 4177/BASALT) - 1290 FEET SOUTH AND 1710 FEET EAST FROM NW CORNER OF SECTION 35

**Authorized Place of Use to be Diminished to Supplemental Irrigation:**

SUPPLEMENTAL IRRIGATION (IR)					
Twp	Rng	Mer	Sec	Q - Q	Acres
6 N	34 E	WM	26	SE SW	9.45
6 N	34 E	WM	26	SW SE	25.00
6 N	34 E	WM	35	NW NE	3.50
TOTAL:					37.95

***Partial Diminishment of a Water Right***

25. On February 12, 2021, the applicant submitted an affidavit for the partial diminishment of water right Certificate 30638. The following portion of an irrigation right is appurtenant to the same lands as the authorized place of use under existing Hudson Bay Improvement District Co. water right Certificates 83953, 83956 and 93399. The portion of the irrigation right to be diminished to supplemental irrigation is as follows:

**Certificate:** 30638 in the name of the name L. M. MARLATT (perfected under Permit G-464)

**Use:** IRRIGATION of 102.4 ACRES

**Rate:** 1.18 CUBIC FEET PER SECOND

**Priority Date:** DECEMBER 4, 1956

**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, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 ACRE-FEET per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL (*aka* -WILLIAMS WELL #4) within the PINE CREEK BASIN

**Authorized Place of Use to be Diminished to Supplemental Irrigation:**

SUPPLEMENTAL IRRIGATION (IR)					
Twp	Rng	Mer	Sec	Q - Q	Acres
6 N	34 E	WM	26	SE SW	13.0
6 N	34 E	WM	26	SW SE	11.7
6 N	34 E	WM	35	NW NE	37.1
6 N	34 E	WM	35	NE NW	40.6
TOTAL:					102.4

**Determination and Proposed Action**

The change in points of appropriation proposed in Transfer Application T-13369 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the diminished portions of Certificates 89896 and 30638 shall be diminished. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the diminished portions shall be diminished.

*If Transfer Application T-13369 is approved, the final order will include the following:*

1. *The change in points of appropriation proposed in Transfer Application T-13369 is approved, the portions of the rights requested to be diminished are diminished.*
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 30638 and 89896 and any related decree.*
3. *Water right Certificates 30638 and 89896 are cancelled. New certificates will be issued describing those portions of Certificate 89896 and 30638 not affected by this transfer and the diminishment.*
4. *The quantity of water diverted at the new point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
5. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*

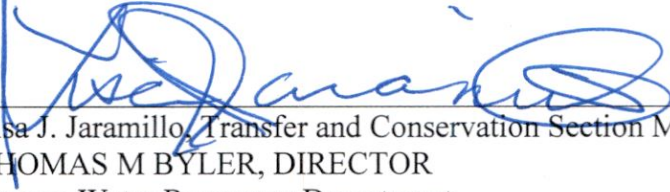


6. *To ensure the new well uses the same source of water as the original well (UMAT 4177), the new well shall be completed to access the same aquifer as the existing well. The replacement well shall be open to a single aquifer in the Columbia River Basalt Group and shall meet applicable well construction standards (OAR 690-200 and OAR 690-210). Following well completion, the well shall be thoroughly developed to remove cuttings and drilling fluids. After drilling but before placement of the final casing and seal, the applicant shall consult with a Department hydrogeologist and the Well Construction Section to determine the final construction. Substantial evidence of a single aquifer completion may be collected by video log, downhole flowmeter, water chemistry and temperature, or other downhole geophysical methods approved by the Department. These methods shall characterize the nature of the basalt rock and assess whether water is moving in the borehole. Any discernable movement of water within the well bore when the well is not being pumped shall be assumed as evidence of the presence of multiple aquifers in the open interval.*
7. *Drill cuttings shall be collected at 10-foot intervals and at changes in formation in the well and a split of each sampled interval shall be provided to the Department.*
8. *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 the new point of appropriation.*
  - b. *The water user shall maintain the meter or measuring device in good working order.*
  - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before October 1, 2027. 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.

JUN 14 2021

Dated at Salem, Oregon this \_\_\_\_\_,

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

*Protests should be addressed to the attention of Water Rights 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.

This Preliminary Determination was prepared by was prepared by Joan Smith. If you have any questions about the information in this document, you may reach me at (503)986-0892, or [Joan.M.Smith@oregon.gov](mailto:Joan.M.Smith@oregon.gov).

**Notice Regarding Service Members:** Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>