



Oregon
Kate Brown, Governor

Water Resources Department
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June 15, 2021

ANDREW HENDRICKS
KELSEY HENDRICKS
85091 EDWARDS ROAD
MILTON FREEWATER, OR 97862

SUBJECT: Water Right Transfer Application T-13291

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to deny application T-13291. This document is an intermediate step in the denial process; water may not be used legally as proposed in the transfer application until a Final Order to approve the transfer 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.

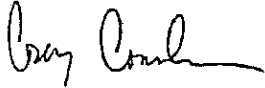
If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

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 corey.a.courchane@oregon.gov or (503) 986-0825, if I may be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Corey Courchane". The signature is fluid and cursive, with a long horizontal stroke at the end.

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-13291
Greg Silbernagel, District 5 Watermaster (*via e-mail*)

encs

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13291, Umatilla County)	PROPOSING DENIAL OF A CHANGE
)	FROM A SURFACE WATER POINT OF
)	DIVERSION TO A GROUND WATER
)	POINT OF APPROPRIATION

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

ANDREW HENDRICKS
KELSEY HENDRICKS
85091 EDWARDS ROAD
MILTON FREEWATER, OR 97862

Findings of Fact

1. On December 3, 2019, ANDREW HENDRICKS and KELSEY HENDRICKS filed an application to change from a surface water point of diversion to a ground water point of appropriation under Certificates 45 and 47. The Department assigned the application number T-13291.
2. Notice of the application for transfer was published on December 10, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 5, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-13291 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of May 5, 2021, for the applicants to respond.
4. As of May 10, 2021, the Department has not received a response.

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

Certificate: 45 in the name of W. C. WEATHERS (confirmed by SOUTH MUD CREEK (F) Decree)
Use: IRRIGATION of 2.9 ACRES
Priority Date: 1890 for the IRRIGATION of 2.0 ACRES and from 1905 for the IRRIGATION of 0.9 ACRES
Rate: 0.03 CUBIC FOOT PER SECOND (CFS) as of date 1890 and 0.01 CFS as of date 1905
Period of Use: FROM APRIL 1ST TO NOVEMBER 1ST OF EACH YEAR
Source: SOUTH BRANCH OF MUD CREEK, a tributary of the WALLA WALLA RIVER, in UMATILLA COUNTY, OREGON

Authorized Point of Diversion:

Ditch
PETRI

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	20	N1/2 of SE SE	2.9

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

Certificate: 47 in the name of H. M. WILLIAMS (confirmed by SOUTH MUD CREEK (F) Decree)
Use: IRRIGATION and DOMESTIC USE, (IRRIGATION DURING THE IRRIGATION SEASON)
Priority Date: 1890
Rate: 0.24 CUBIC FOOT PER SECOND
Source: SOUTH BRANCH OF MUD CREEK, a tributary of the WALLA WALLA RIVER, in UMATILLA COUNTY, OREGON

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
<i>Not specified in certificate or decree</i>				

Authorized Place of Use:

IRRIGATION AND DOMESTIC USE					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	20	S1/2 of NE SE	14.4

7. Transfer Application T-13291 proposes to change from surface water points of diversion to a groundwater point of appropriation (well) located approximately 1392 feet NE from the existing point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	20	NE SE	WELL POD - 2000 FEET NORTH AND 1080 FEET WEST FROM THE SE CORNER OF SECTION 20

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

8. Water has been used within the last five years 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.
9. 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-13291.
10. The proposed change would not result in enlargement of the rights.
11. On March 17, 2020, the Department determined the proposed point of appropriation will not develop the same aquifer (source) as the existing authorized point of diversion. The proposed well is hydraulically connected to Mud Creek. To make the administrative finding of same source in a surface water to groundwater transfer, the proposed change must meet specific standards. Same source is defined in 690-380-2130(11)(b) as when pumping at the proposed new point of appropriation will result in stream depletion of 50% of the pumping rate within 10 days of pumping. Applying the range of parameters derived from local aquifer tests (Petrides, 2008) does not result in 50% stream depletion with 10 days. Therefore, the proposed well cannot be found to develop the same source as Mud Creek.

Based on the Department's determination that the proposed well cannot be found to develop the same source as Mud Creek, the proposed change of a surface water point of diversion to a groundwater point of appropriation does not satisfy the requirements under ORS 540.531(2)(C) and OAR 690-380-2130(2)(C).

Determination and Proposed Action

The change from a surface water points of diversion to a groundwater point of appropriation proposed in Transfer Application T-13291 appears to be NOT consistent with the requirements of ORS 540.531(2)(C) and OAR 690-380-2130(2)(C). If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be denied.

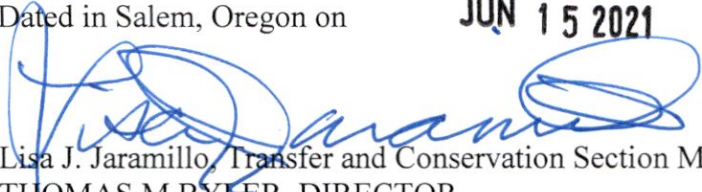
If the issue of the proposed well not developing the same source as Mud Creek is resolved, and Transfer Application T-13291 is approved, the final order will include the following:

1. *The change from surface water points of diversion to a groundwater point of appropriation proposed in Transfer Application T-13291 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 Certificates 45 and 47, and any related decree.*
3. *Water right Certificates 45 and 47 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.*

4. *The quantity of water diverted at the new point of appropriation, shall not exceed the quantity of water lawfully available at the original points of diversion.*
5. *The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.*
6. *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.*
7. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on

JUN 15 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

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.