

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13358, Washington County	)	PROPOSING APPROVAL OF AN
	)	ADDITIONAL POINT OF DIVERSION,
	)	CHANGE IN PLACE OF USE, CHANGE IN
	)	CHARACTER OF USE 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**

RICK AND ALISON LARSON  
46780 NW GRAHAM ROAD  
BANKS, OR 97106

**Findings of Fact**

1. On January 29, 2020, RICK AND ALISON LARSON filed an application to change the character of use under Certificate 29781. The Department assigned the application number T-13358.
2. Notice of the application for transfer was published on February 4, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 28, 2020, the Department requested a Voluntary Cancellation for the 3.2 acres from Certificate 29780, identified as cancelled in the application. On September 14, 2020, the agent for the applicant sent the Voluntary Cancellation and map to the Department.

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 19, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13358 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of January 21, 2021, for the applicants to respond.
5. On January 13, 2021, the agent for the applicants requested that the response date for the draft Preliminary Determination be extended to February 4, 2021. The Department responded on the same day that the extension was approved.
6. On February 4, 2021, the agent for the applicants responded with information requested by the Department establishing ownership of the property involved in the transfer. Further, the agent requested that the completion date be extended to October 1, 2023, citing infrastructure costs and timelines.
7. On February 26, 2021, the Department received a revised transfer application, fees, and maps for Transfer T-13358. The revision proposes an additional point of diversion and to change the character of use and place of use under Certificate 29781.
8. On May 11, 2021, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-13358 to the applicants. The revised draft Preliminary Determination cover letter set forth a deadline of June 10 2021, for the applicants to respond. The applicants 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.
9. The portion of the right to be transferred is as follows:

**Certificate:** 29781 in the name of EARL AND ISLA GENZER (perfected under Permit S-23833)

**Use:** IRRIGATION of 3.2 ACRES

**Priority Date:** AUGUST 22, 1955

**Rate:** 0.02 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 from direct flow 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 from direct flow and storage from reservoirs constructed under permit No. R-1795.

**Source:** UNNAMED CREEK, SUMP AND RESERVOIR CONSTRUCTED UNDER APPLICATION NO. R-30231, PERMIT NO. R-1795

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
2 N	4 W	WM	27	SW SE

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	4 W	WM	27	SW SE	0.7
2 N	4 W	WM	27	SE SE	2.5
TOTAL					3.2

10. Certificate 29781 does not describe the measured distance of the point of diversion, however information is available from the applicant, indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
2 N	4 W	WM	27	SW SE	LARSON DIVERSION - 60 FEET NORTH AND 1500 FEET WEST FROM THE SE CORNER OF SECTION 27

11. Transfer Application T-13358 proposes an additional point of diversion approximately 552.4 feet (ft.) upstream from the authorized point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
2 N	4 W	WM	27	SE SE	LARSON APOD - 125 FEET NORTH AND 960 FEET WEST FROM THE SE CORNER OF SECTION 27

12. Transfer Application T-13358 also proposes to change the place of use of the right to:

COMMERCIAL					
Twp	Rng	Mer	Sec	Q-Q	Tax Lot
2 N	4 W	WM	27	NE SE	1000
2 N	4 W	WM	27	NW SE	
2 N	4 W	WM	27	SW SE	
2 N	4 W	WM	27	SE SE	

13. Transfer Application T-13358 proposes to change the character of use from irrigation of 3.2 acres to commercial use.

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

14. 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.
15. 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-13358.
16. The proposed change would not result in enlargement of the right.
17. The proposed change would not result in injury to other water rights.

18. All other application requirements are met.

**Partial Cancellation of a Water Right**

19. On September 23, 2020, the applicant submitted an affidavit meeting the requirements of ORS 540.621 for the partial cancellation of water right Certificate 29780. The applicant has abandoned any and all interest in this portion of the water right for primary irrigation and is described as follows:

- Certificate:** 29780 in the name of the name EARL AND ISLA GENZER (perfected under Permit S-23833 and Reservoir Permit R-1795)
- Use:** IRRIGATION
- Priority Date:** AUGUST 22, 1955
- Limit/Duty:** The amount of water entitled to be stored each year under such right, for the purposes aforesaid, shall not exceed 0.44 acre feet in East Reservoir and 2.62 acre feet in sump.
- Source:** UNNAMED CREEK, tributary of CEDAR CANYON CREEK (W. DAIRY CREEK)

**Authorized Place of Use to be Cancelled:**

Twp	Rng	Mer	Sec	Q-Q	Point of Diversion
2 N	4 W	WM	27	SW SE	Sump
2 N	4 W	WM	27	SW SE	Reservoir

**Determination and Proposed Action**

The additional point of diversion, change in place of use, and change in character of use proposed in Transfer Application T-13358 appear 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.

*If Transfer Application T-13358 is approved, the final order will include the following:*

- 1. The additional point of diversion, change in place of use, and change in character of use proposed in Transfer Application T-13358 are approved. The portion of Certificate 29780 that is 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 29781 and any related decree.*
- 3. Water right Certificate 29781 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
- 4. Water right Certificate 29780 is cancelled. A new certificate will be issued describing that portion of the right not affected by the cancellation.*

5. *The quantity of water diverted at the additional point of diversion (Larson APOD), together with that diverted at the original point of diversion (Larson Diversion), shall not exceed the quantity of water lawfully available at the original point of diversion (Larson Diversion).*
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 diversion, (new and existing).*
  - 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.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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           **JUL 13 2021**          

  
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 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 service members have a right to stay these proceedings under the federal service members 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



**Oregon**  
Kate Brown, Governor

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

JUNE 13, 2021

VIA E-MAIL

RICK AND ALISON LARSON  
46780 NW GRAHAM ROAD  
BANKS, OR 97106

SUBJECT: Water Right Transfer Application T-13358

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13358. 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 Hillsboro News-Times 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.

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Please do not hesitate to contact me at [tamera.l.smith@oregon.gov](mailto:tamera.l.smith@oregon.gov) or 503-986-0864 if I may be of assistance.

Kindest regards,

A handwritten signature in black ink, appearing to read 'Tamera L. Smith', with a large, sweeping flourish above the name.

Transfer Caseworker  
Transfer and Conservation Section

cc: Transfer Application file T-13358  
Jacob W. Constans, District 18 Watermaster (*via e-mail*)  
Richard F. Parsons, Agent for the applicant (*via e-mail*)

encs