



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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September 22, 2021

LEE GILMOUR
30427 STELLMACHER DRIVE
ALBANY, OR 97321

SUBJECT: Water Right Transfer Application T-13512

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13512. 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.

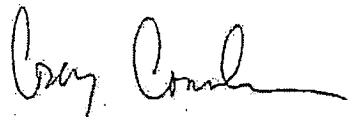
If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

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 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-13512
Lanaya F. Blakely, District 2 Watermaster (*via e-mail*)
Udell Engineering and Land Surveying, LLC, Agent for the applicant (*via e-mail*)

encs

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13512, Linn County)	PROPOSING APPROVAL FOR AN
)	ADDITIONAL POINT OF DIVERSION

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

LEE GILMOUR
30427 STELLMACHER DRIVE
ALBANY, OR 97321

Findings of Fact

1. On September 2, 2020, LEE GILMOUR filed an application for an additional point of diversion under Certificate 90098. The Department assigned the application number T-13512.
2. Notice of the application for transfer was published on September 8, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 25, 2021, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of deficiencies in the application. Table 1 of the application identified a change in point of diversion, whereas Table 2 identified an additional point of diversion, and the affidavits for Evidence of Use and Consent by Deeded Landowner are copies. The Department requires an original signature on affidavits, so the original affidavits need to be submitted. The Department requested that the deficiencies be resolved by February 24, 2021.
4. On February 24, 2021, the agent submitted a revised Table 1 identifying an additional point of diversion, rather than a change in point of diversion. The applicant is actively retrieving the original affidavits for Evidence of Use, to be submitted at a later date.

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. On March 22, 2021, the Department informed the applicant, that a Final Order would not be issued unless the Department receives the original Evidence of Use affidavits.
6. On June 14, 2021, the Department received an Evidence of Use affidavit containing an original signature.
7. On June 28, 2021, the Department received an Affidavit of Consent by Deeded Landowner containing an original signature, resolving the deficiencies.
8. On July 7, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13512 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 6, 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.

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

Certificate: 90098 in the name of WILLIAM J. STELLMACHER and JOYCE M. CARNEGIE (perfected under Permit S-53335)

Use: IRRIGATION of 84.93 ACRES

Priority Date: MAY 6, 1991

Rate: 1.03 CUBIC FEET PER SECOND FROM LIVE FLOW AND NOT MORE THAN 104.8 ACRE-FEET (AF) PER YEAR FROM STORED WATER ONLY, PROVIDED THAT THE TOTAL VOLUME OF STORED WATER USED UNDER THIS PERMIT TOGETHER WITH ANY AMOUNT USED UNDER PERMIT 53334 DOES NOT EXCEED 104.8 AF PER YEAR, BEING THE AMOUNT OF STORED WATER MADE AVAILABLE UNDER THE BUREAU OF RECLAMATION WATER SUPPLY CONTRACT

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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Period of Use: MARCH 1 THROUGH JUNE 30 AND SEPTEMBER 1 THROUGH OCTOBER 31 FROM LIVE FLOW; STORED WATER MAY BE USED MARCH 1 THROUGH OCTOBER 31 OR AS FURTHER LIMITED BY THE BUREAU OF RECLAMATION WATER SUPPLY CONTRACT.

Source: HORSESHOE LAKE AND WILLAMETTE BASIN PROJECT RESERVOIRS, CONSTRUCTED UNDER PERMIT R-5363, TRIBUTARIES OF WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
11 S	4 W	WM	15	SW SW	59	POD #1 - 500 FEET NORTH AND 100 FEET EAST FROM THE SW CORNER OF SECTION 15

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
11 S	4 W	WM	15	NE SW		15.70
11 S	4 W	WM	15	NW SW	59	3.50
11 S	4 W	WM	15	SW SW	59	8.93
11 S	4 W	WM	15	SE SW		39.50
11 S	4 W	WM	15	NW SE	58	4.40
11 S	4 W	WM	15	SW SE		12.90
Total						84.93

10. Transfer Application T-13512 proposes an additional point of diversion approximately 515.8 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
11 S	4 W	WM	15	SW SW	59	POD #2 - 214 FEET NORTH AND 530 FEET EAST FROM THE SW CORNER OF SECTION 15

11. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

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 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-13512.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.
16. All other application requirements are met.

Determination and Proposed Action

The additional point of diversion proposed in Transfer Application T-13512 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.


If Transfer Application T-13512 is approved, the final order will include the following:

- 1. The additional point of diversion proposed in Transfer Application T-13512 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 Certificate 90098 and any related decree.*
- 3. Water right Certificate 90098 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 additional point of diversion (POD #2), together with that diverted at the original point of diversion (POD #1), shall not exceed the quantity of water lawfully available at the original point of diversion (POD #1).*
- 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 (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.*
- 6. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*
- 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

SEP 22 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 503-979-3917 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.