



# Oregon

Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

October 12, 2021

HOMER W PETERSON ESTATE  
C/O JENSON AND SPRATLING, LLP  
PO BOX 550  
PENDLETON, OR 97801

SUBJECT: Water Right Transfer Application T-13486

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13486. 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 East Oregonian 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.

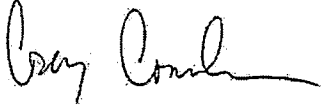
If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

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) 979-3917, 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-13486  
Gregory M. 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-13486, Umatilla County	)	PROPOSING APPROVAL OF A CHANGE IN
	)	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**

HOMER W PETERSON ESTATE  
C/O JENSON AND SPRATLING, LLP  
PO BOX 550  
PENDLETON, OR 97801

**Findings of Fact**

1. On July 13, 2020, HOMER W PETERSON ESTATE, C/O JENSON AND SPRATLING, LLP filed an application to change the point of diversion under Certificate 87012. The Department assigned the application number T-13486.
2. Notice of the application for transfer was published on July 21, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 7, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13486 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 9, 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.

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.

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

**Certificate:** 87012 in the name of J. A. GUDERIAN (confirmed by UMATILLA RIVER Decree)

**Use:** IRRIGATION of 31.0 ACRES, DOMESTIC, and STOCK USES

**Priority Date:** 1873 for 5.3 ACRES, 1889 for 5.3 ACRES, and 1900 for 20.4 ACRES

**Rate:** 0.39 CUBIC FOOT PER SECOND

**Source:** BIRCH CREEK, a tributary of the UMATILLA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	32 E	WM	22	NW SE	AUTH POD - 700 FEET SOUTH AND 1800 FEET WEST FROM THE E1/4 CORNER OF SECTION 22

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	32 E	WM	10	SW SW	18.0
1 N	32 E	WM	10	SE SW	0.5
1 N	32 E	WM	15	NE NW	12.0
1 N	32 E	WM	15	NW NW	0.5
Total					31.0

DOMESTIC and STOCK USES				
Twp	Rng	Mer	Sec	Q-Q
1 N	32 E	WM	10	SW SW
1 N	32 E	WM	10	SE SW
1 N	32 E	WM	15	NE NW
1 N	32 E	WM	15	NW NW

5. Transfer Application T-13486 proposes to move the authorized point of diversion approximately 1.9 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	32 E	WM	10	SW SW	NEW POD - 40 FEET NORTH AND 1200 FEET EAST FROM THE SW CORNER OF SECTION 10

6. 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)]***

7. 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.
8. 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-13486.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.
11. All other application requirements are met.

**Determination and Proposed Action**

The change in point of diversion proposed in Transfer Application T-13486 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.

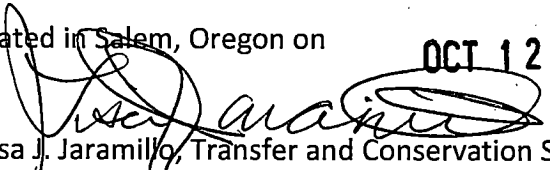
*If Transfer Application T-13486 is approved, the final order will include the following:*

1. *The change in point of diversion proposed in Transfer Application T-13486 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 87012 and any related decree.*
3. *Water right Certificate 87012 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 diversion (New POD), shall not exceed the quantity of water lawfully available at the original point of diversion (Auth POD).*

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 diversion, 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. *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

**OCT 12 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](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.