



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

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OCTOBER 12, 2021

VIA CERTIFIED MAIL

NANCY COLE

3020 CEDAR FLAT RD.

WILLIAMS, OR 97544

SUBJECT: Water Right Transfer Application T-13672

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13672. 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 tamera.l.smith@oregon.gov or 503-979-9607 if I may be of assistance.

Kindest regards,

A handwritten signature in dark ink, appearing to read 'Tamera L. Smith', with a stylized flourish at the end.

Transfer Caseworker
Transfer and Conservation Section

cc: T-13672
Scott C. Ceciliani, District 14 Watermaster (*via e-mail*)
Norm Daft, Agent for the applicant (*via e-mail*)
Clay Jordan, Agent for the applicant (*via e-mail*)

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13672, Josephine County	)	PROPOSING APPROVAL OF A CHANGE IN
	)	PLACE 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

NANCY COLE
3020 CEDAR FLAT RD.
WILLIAMS, OR 97544

Findings of Fact

1. On April 14, 2021, NANCY COLE filed an application to change the place of use under Certificates 52996 and 52997, and partial cancellation of Certificate 3465. The Department assigned the application number T-13672.
2. Notice of the application for transfer was published on April 27, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 24, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13672 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 23, 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.
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4. The portion of the first right to be transferred is as follows:

Certificate: 52996 in the name of JOHN LATHROP (confirmed by Rogue River (F) Decree)
Use: IRRIGATION of 3.2 ACRES AND STOCK USE
Priority Date: FEBRUARY 1877
Rate: 0.05 CUBIC FOOT PER SECOND PER ACRE IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	5 W	WM	6	SW NE	GIBSON AND MCGEE DITCH

Source: MUNGER CREEK, a tributary of WEST FORK WILLIAMS CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	5 W	WM	5	NE SW	POD-1 - 110 FEET SOUTH AND 950 FEET WEST FROM THE C1/4 CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
39 S	5 W	WM	5	NE SW	700 & 703	3.2

STOCK USE				
Twp	Rng	Mer	Sec	Q-Q
39 S	5 W	WM	5	NE SW

5. The applicant has submitted information that describes the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	5 W	WM	5	NE SW	POD-1 - 810 FEET WEST FROM THE C1/4 CORNER OF SECTION 5

6. Transfer Application T-13672 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
39 S	5 W	WM	5	NW SE	703	3.2

STOCK USE				
Twp	Rng	Mer	Sec	Q-Q
39 S	5 W	WM	5	NW SE

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

Certificate: 52997 in the name of JOHN LATHROP (confirmed by Rogue River (F) Decree)
Use: IRRIGATION OF 4.8 ACRES AND STOCK USE
Priority Date: FEBRUARY 1877
Rate: 0.08 CUBIC FOOT PER SECOND PER ACRE IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	5 W	WM	6	SW NE	GIBSON AND MCGEE DITCH

Source: MUNGER CREEK, a tributary of WEST FORK WILLIAMS CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	5 W	WM	5	NE SW	POD-1 - 110 FEET SOUTH AND 950 FEET WEST FROM THE C1/4 CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	5 W	WM	5	NE SW	4.8

STOCK USE				
Twp	Rng	Mer	Sec	Q-Q
39 S	5 W	WM	5	NE SW

8. The applicant has submitted information that describes the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	5 W	WM	5	NE SW	POD-1 - 810 FEET WEST FROM THE C1/4 CORNER OF SECTION 5

9. Transfer Application T-13672 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	5 W	WM	5	NW SE	4.8

STOCK USE				
Twp	Rng	Mer	Sec	Q-Q
39 S	5 W	WM	5	NW SE

Partial Cancellation of a Water Right

10. On April 14, 2021, Nancy Cole, holder of the water rights, submitted an affidavit authorizing cancellation of a portion of water right Certificate 3465. The portion of the right to be cancelled is as follows:

Certificate: 3465 in the name of JOSEPHAS MOOMAW (perfected under Permit S-4967)

Use: IRRIGATION of 8.0 ACRES

Priority Date: MARCH 4, 1921

Rate: 0.10 CUBIC FOOT PER SECOND

Source: WEST FORK WILLIAMS CREEK, tributary of APPLEGATE RIVER

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	5 W	WM	5	NW SE	8.0

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

11. 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 rights are subject to forfeiture under ORS 540.610.
12. 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-13672.
13. The proposed changes would not result in enlargement of the rights.
14. The proposed changes would not result in injury to other water rights.
15. All other application requirements are met.

Determination and Proposed Action

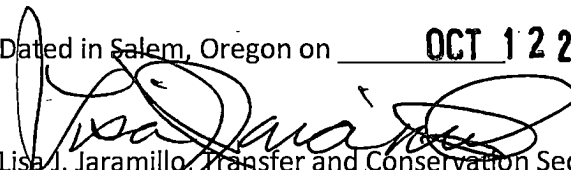
The change in place of use proposed in Transfer Application T-13672 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved. The portion of the right that has been abandoned is cancelled.

If Transfer Application T-13672 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-13672 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 52996 and 52997 and any related decree.*

3. *Water right Certificates 52996, 52997, and 3465 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer and cancellation.*
4. *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.*
5. *The former place of use of the transferred rights shall no longer receive water under the rights.*
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 changes 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 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: Tamera Smith. If you have any questions about the information in this document, you may reach me at tamera.l.smith@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 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 Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.