



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

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October 27, 2021

Applicant

AARON J. KAFKA

42598 E LANE 16 LN

BURNS, OR 97720

SUBJECT: Water Right Transfer Application T-13158

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13158. 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 Burns Times-Herald 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.

Please do not hesitate to contact me by email at arla.l.davis@oregon.gov, if I may be of assistance.

Sincerely,

Arla L. Davis

Arla L Davis

Transfer Specialist

Transfer and Conservation Section

cc: T-13158

John A. Short, Agent for the applicant *(via e-mail)*

J R. Johnson, District 10 Watermaster *(via e-mail)*

John A. Short, Agent for the applicant *(via e-mail)*

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13158, Harney County	)	PROPOSING APPROVAL OF A CHANGE IN
	)	POINT OF APPROPRIATION AND PLACE OF
	)	USE

Authority

Oregon Revised Statutes (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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

AARON J. AND KATY J. KAFKA
42598 E LANE 16 LN
BURNS, OR 97720

Findings of Fact

1. On April 1, 2019, AARON J. AND KATY J. KAFKA filed an application to change the points of appropriation and to change the place of use under Certificate 62684. The Department assigned the application number T-13158.
2. Notice of the application for transfer was published on April 9, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 30, 2020, the agent for the applicant was notified by email that the consent to transfer provided to the applicant by the current deeded landowner Laura Freilino, dated December 14, 2018, has been rescinded by Laura Freilino in writing on October 18, 2019. The applicant was given the choice to withdraw the application or the application would be denied. The Department set a deadline of September 11, 2020, later extended to September 18, 2020, for the applicant to respond. The agent for the applicant responded asking that the Department proceed with denial of the application.
4. On August 30, 2020, the agent for the applicant was notified by email that the consent to transfer provided to the applicant by the current deeded landowner Laura Freilino, dated December 14, 2018, has been rescinded by Laura Freilino in writing on October 18, 2019. The applicant was given the choice to withdraw the application or the application would be denied. The Department set a deadline of September 11, 2020, later extended to

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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September 18, 2020, for the applicant to respond. The agent for the applicant responded asking that the Department proceed with denial of the application.

5. On April 18, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-13158 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of May 18, 2021, for the applicants to respond. On July 29, 2021, the agent for the applicants provided the Department with consent from the current deeded landowners, Bradley R. Erbe and Megan A. Erbe, along with the necessary ownership information to demonstrate that the applicants are authorized to pursue the transfer, thereby allowing the Department to move forward with an approval of Transfer Application T-13158. The agent for the applicants requested that the Department proceed with issuance of a Preliminary Determination to approve Transfer Application T-13158.

6. The right to be transferred is as follows:

Certificate: 62684 in the name of ELBERT AND LETHA PUGH (perfected under Permit G-8808)

Use: IRRIGATION of 7.6 ACRES

Priority Date: JUNE 21, 1979

Rate: 0.1 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, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL within the MALHEUR LAKE BASIN

Authorized Point(s) of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	33 E	WM	13	NW NW	160 FEET SOUTH AND 1030 FEET EAST FROM THE NW CORNER OF SECTION 13

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	33 E	WM	13	NW NW	7.60

7. Transfer Application T-13158 proposes to move the authorized point of appropriation with approximate distances between 0.4 and 0.55 miles east from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	33 E	WM	13	NW NE	WELL 1 - 250 FEET SOUTH AND 2190 FEET WEST FROM THE NE CORNER OF SECTION 13
24 S	33 E	WM	13	NW NE	WELL 2 - 140 FEET SOUTH AND 1910 FEET WEST FROM THE NE CORNER OF SECTION 13

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	33 E	WM	13	NW NE	WELL 3 - 140 FEET SOUTH AND 1670 FEET WEST FROM THE NE CORNER OF SECTION 13
24 S	33 E	WM	13	NW NE	WELL 4 - 140 FEET SOUTH AND 1360 FEET WEST FROM THE NE CORNER OF SECTION 13

8. Transfer Application T-13158 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	33 E	WM	13	NW NE	7.6

Transfer Review Criteria (OAR 690-380-4010)

9. 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.
10. 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-13158.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in point of appropriation and change in place of use proposed in Transfer Application T-13158 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-13158 is approved, the final order will include the following:

1. *The change in point of appropriation and change in place of use proposed in Transfer Application T-13158 are 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 62684 and any related decree.*
3. *Water right Certificate 62684 is cancelled.*
4. *The quantity of water diverted at the new points of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*

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 appropriation (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. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*

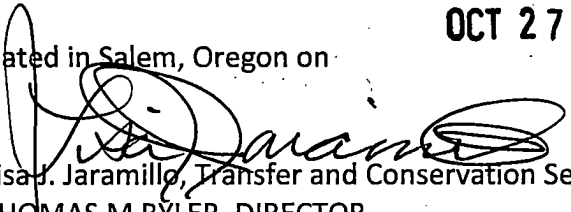
7. *The former place of use of the transferred right shall no longer receive water under the right.*

8. *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.*

9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

OCT 27 2021

Dated in Salem, Oregon on


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Arla Davis. If you have questions about the information in this document, you may reach me at arla.l.davis@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.

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 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.