



Oregon

Kate Brown, Governor

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

November 3, 2021

VIA CERTIFIED MAIL AND E-MAIL

Applicant

MIKE AND LORI CHITWOOD
64595 FORT ROCK RD
FORT ROCK, OR 97735

SUBJECT: Water Right Transfer Application T-13359

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13359. 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 Lake County Examiner 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.

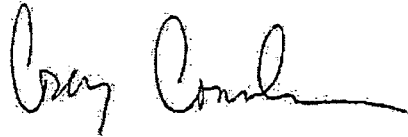
If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

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 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: Transfer application file T-13359
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)
Scott Montgomery, 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-13359, Lake County)	PROPOSING APPROVAL OF A CHANGE IN
)	POINT OF APPROPRIATION AND PLACE OF
)	USE AND CORRECTING A SCRIVENER'S
)	ERROR IN A WATER RIGHT CERTIFICATE

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

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Findings of Fact

1. On January 23, 2020, MIKE AND LORI CHITWOOD filed an application to change the point of appropriation and to change the place of use under Certificate 90485. The Department assigned the application number T-13359.
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 July 29, 2021, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of deficiencies in the application. The application proposed to make changes under Certificate 90485. On March 3, 2021, the Department issued a Final Order (Special Order Volume 118, Page 657), approving Transfer Application T-12704, cancelling Certificate 90485, and issuing superseding Certificate 94851. For the purposes of record keeping, the application should identify the correct certificate for which the changes are being made. The Department requested that the deficiencies be resolved by August 30, 2021.

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. On July 30, 2021, upon review of the application, the Department identified a scrivener's error in water right Certificate 94851. The certificate describes the use of irrigation of 41.31 acres with an authorized rate of 0.52 cubic foot per second (cfs). Transfer application T-12704 approved a change in point of appropriation and place of use of 3.7 acres with a rate of 0.046 cfs, under Certificate 90485. Prior to the approval of T-12704, Certificate 90485 authorized irrigation of 75.01 acres with an authorized rate of 0.938 cfs. With the approval of T-12704, the remaining right, being Certificate 94851, should describe the irrigation of 71.31 acres with an authorized rate of 0.892 cfs.
5. On July 31, 2021, the applicant's agent submitted a revised application, resolving the deficiency.
6. On September 8, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13359 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of October 8, 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.
7. The portion of the right to be transferred is as follows:

Certificate: 94851 in the name of KEN AND MARIA CADE (perfected under Permit G-10701)

Use: IRRIGATION of 30.00 ACRES

Priority Date: NOVEMBER 3, 1983

Rate: 0.375 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, 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: WELL 2 (NEW) in the FORT ROCK VALLEY BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	15 E	WM	27	NW NW	WELL 2 (NEW) - 1309 FEET SOUTH AND 1562 FEET WEST FROM THE N1/4 CORNER OF SECTION 27

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	15 E	WM	27	NW NE	10.71
25 S	15 E	WM	27	NE NW	10.60
25 S	15 E	WM	27	NW NW	8.69
Total					30.00

8. Transfer Application T-13359 proposes to move the authorized point of appropriation approximately 6.4 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	14 E	WM	16	SE SE	POA #1 - 1000 FEET NORTH AND 60 FEET WEST FROM THE SE CORNER OF SECTION 16

9. Transfer Application T-13359 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	14 E	WM	16	NE SE	7.05
25 S	14 E	WM	16	SE SE	22.95
Total					30.00

Transfer Review Criteria (OAR 690-380-4010)

10. 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.
11. 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-13359.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.
14. All other application requirements are met.

Determination and Proposed Action

The change in point of appropriation and change in place of use proposed in Transfer Application T-13359 appears 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-13359 is approved, the final order will include the following:

1. *The changes in point of appropriation and place of use proposed in Transfer Application T-13359 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 94851 and any related decree.*
3. *Water right Certificate 94851 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 appropriation (POA #1), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 2 (NEW)).*
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 appropriation.*
 - 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, 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 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.*

Dated in Salem, Oregon on **NOV 03 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.