



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

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November 3, 2021

Applicant

TODD TITUS
43613 RODEO LANE
BURNS, OR 97720

SUBJECT: Water Right Transfer Application T-13517

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13517. 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.

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 contact me at scott.a.grew@oregon.gov or 503-986-0890 if I may be of assistance.

Sincerely,

Scott Grew

Transfer Specialist

cc: T-13517
J.R. Johnson, District 10 Watermaster (via e-mail)
Scott D. Montgomery, 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-13517, Harney County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF
)	APPROPRIATION, ADDITIONAL
)	POINTS 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.

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Findings of Fact

1. On September 15, 2020, TODD TITUS filed an application to change the point of appropriation, additional point of appropriation and to change the place of use under Certificates 49447 and 53049. The Department assigned the application number T-13517.
2. Notice of the application for transfer was published on September 15, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 2, 2021, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13517 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 1, 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.
4. On July 30, 2021, the agent for the applicant requested the completion date of October 1, 2026 because the applicant needs the additional time in order to acquire financing for the additional POA. The Department granted the longer time for completion per OAR 690-380-5140 (3).

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

Certificate: 49447 in the name of DEE V. AND SHELIE U. DOMAN (perfected under Permit G-29)
Use: IRRIGATION of 3.6 ACRES
Priority Date: SEPTEMBER 6, 1955
Rate: 0.05 CUBIC FOOT PER SECOND, IF AVAILABLE AT THE ORIGINAL POINT OF APPROPRIATION; NE ¼ SE ¼, SECTION 6, T. 26 S., R. 34 E., W.M.; 20½ CHAINS EAST AND ¼ CHAIN SOUTH FROM CENTER, SECTION 6
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 a tributary of CRANE CREEK

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	34 E	WM	6	SE NE	2510 FEET SOUTH AND 1220 FEET WEST FROM NE CORNER OF SECTION 6

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	34 E	WM	6	SE NE	3.6

6. Transfer Application T-13517 proposes to move the authorized point of appropriation approximately 0.6 mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	34 E	WM	5	SW NW	WELL #3 - 1260 FEET NORTH AND 1320 FEET EAST FROM THE W1/4 CORNER OF SECTION 5

7. Transfer Application T-13517 also proposes an additional point of appropriation approximately 0.6 mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	34 E	WM	5	NW NW	WELL #4 - 50 FEET SOUTH AND 590 FEET EAST FROM THE NW CORNER OF SECTION 5

8. Transfer Application T-13517 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	34 E	WM	32	SW SE	3.6

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

Certificate: 53049 in the name of CONNECTICUT GENERAL LIFE INSURANCE COMPANY (perfected under Permit G-7543)

Use: IRRIGATION of 27.6 ACRES

Priority Date: APRIL 12, 1977

Rate: 0.34 CUBIC FEET 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: WELL 3, a tributary of MALHEUR LAKE

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	34 E	WM	5	SW NW	WELL #3 - 1260 FEET NORTH AND 1320 FEET EAST FROM THE W1/4 CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
26 S	34 E	WM	5	NE NW	3	3.6
26 S	34 E	WM	5	NW NW	4	7.4
26 S	34 E	WM	5	SW NW		8.4
26 S	34 E	WM	5	SE NW		6.0
26 S	34 E	WM	5	NE SW		1.5
26 S	34 E	WM	5	NW SW		0.7
					Total	27.6

10. Transfer Application T-13517 proposes an additional point of appropriation approximately 0.6 mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	34 E	WM	5	NW NW	WELL #4 - 50 FEET SOUTH AND 590 FEET EAST FROM THE NW CORNER OF SECTION 5

11. Transfer Application T-13517 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	
25 S	34 E	WM	32	SW SE	11.9	
25 S	34 E	WM	32	SE SE	15.7	
					Total	27.6

Transfer Review Criteria (OAR 690-380-4010)

12. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are 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(s) were present within the five-year period prior to submittal of Transfer Application T-13517.
14. The proposed change would not result in enlargement of the rights.
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 change in point of appropriation, additional point of appropriation and change in place of use proposed in Transfer Application T-13517 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-13517 is approved, the final order will include the following:

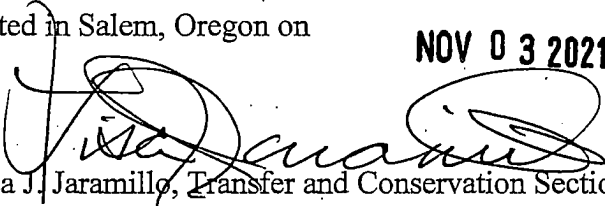
1. *The change in point of appropriation, additional points of appropriation and change in place of use proposed in Transfer Application T-13517 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 49447 and 53049 and any related decree.*
3. *Water right Certificates 49447 and 53049 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
4. *Under Certificate 49447, the quantity of water diverted at the new point of appropriation (Well 3), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 1).*
5. *Under Certificate 49447, the quantity of water diverted at the additional point of appropriation (Well 4), together with that diverted at the new point of appropriation (Well 3), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 1).*
6. *Under certificate 53049, the quantity of water diverted at the additional point of appropriation (Well 4), together with that diverted at the original point of appropriation (Well 3), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 3).*

7. *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.*
 - 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.*
8. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
9. *The former place of use of the transferred right shall no longer receive water under the right.*
10. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2026**. 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.*

11. After satisfactory proof of beneficial use is received, new certificates confirming the rights 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 Scott Grew. If you have questions about the information in this document, you may reach him at scott.a.grew@oregon.gov or 503-986-0890.

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.