



# Oregon

Kate Brown, Governor

## Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

December 1, 2021

VIA CERTIFIED MAIL AND E-MAIL

### **Applicant**

SCOTT AND JOSE TOBIASSON

PO BOX 93

FORT ROCK, OR 97735

SUBJECT: Water Right Transfer Application T-13246

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13246. 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.

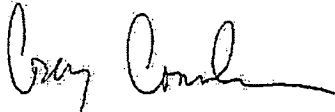
If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

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](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: Transfer Application file T-13246  
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-13246, Lake County	)	PROPOSING APPROVAL OF A CHANGE IN
	)	POINTS OF APPROPRIATION AND PLACES
	)	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**

SCOTT AND JOSE TOBIASSON  
PO BOX 93  
FORT ROCK, OR 97735

**Findings of Fact**

1. On September 5, 2019, SCOTT AND JOSE TOBIASSON filed an application to change the points of appropriation and to change the place of use under Certificates 83439 and 88683. The Department assigned the application number T-13246.
2. Notice of the application for transfer was published on September 10, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 4, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13246 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of September 3, 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.

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 first right to be transferred is as follows:

**Certificate:** 83439 in the name of O R. HEAVILIN (perfected under Permit G-7054)  
**Use:** IRRIGATION of 23.04 ACRES  
**Priority Date:** DECEMBER 14, 1976  
**Rate:** 0.288 CUBIC FOOT PER SECOND FROM WELL 2  
**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 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** WELL 2 in the FORT ROCK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	15 E	WM	3	NE NW	WELL 2 - 1273 FEET SOUTH AND 2645 FEET WEST FROM THE NE CORNER OF SECTION 3

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	15 E	WM	3	NW NW	1.00
27 S	15 E	WM	3	SW NW	22.04
Total					23.04

5. Transfer Application T-13246 proposes to move the authorized point of appropriation approximately 7.3 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	15 E	WM	33	SW NE	POA 3 - 1275 FEET NORTH AND 1350 FEET WEST FROM THE E1/4 CORNER OF SECTION 33.

6. Transfer Application T-13246 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	15 E	WM	33	NE NE	10.30
25 S	15 E	WM	33	NW NE	2.80
25 S	15 E	WM	33	SW NE	2.50
25 S	15 E	WM	33	SE NE	7.44
Total					23.04

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

**Certificate:** 88683 in the name of JACK AND CHERIL HEAVILIN (perfected under Permit G-8849)

**Use:** IRRIGATION of 6.96 ACRES

**Priority Date:** FEBRUARY 27, 1980

**Rate:** 0.09 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, within the FORT ROCK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	15 E	WM	3	NE NW	WELL 2 - SOUTH 63 DEGREES 40. MINUTES 1 SECOND EAST, 2923 FEET FROM THE NW CORNER OF SECTION 3

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	15 E	WM	3	SW NW	6.96

8. Transfer Application T-13246 proposes to move the authorized point of appropriation approximately 7.3 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	15 E	WM	33	SW NE	POA 3 - 1275 FEET NORTH AND 1350 FEET WEST FROM THE E1/4 CORNER OF SECTION 33

9. Transfer Application T-13246 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	15 E	WM	33	SE NE	6.96

**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 rights. There is no information in the record that would demonstrate that the rights are 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 rights were present within the five-year period prior to submittal of Transfer Application T-13246.

12. The proposed changes would not result in enlargement of the rights.
13. The proposed changes would not result in injury to other water rights.
14. All other application requirements are met.

#### **Determination and Proposed Action**

The change in points of appropriation and change in places of use proposed in Transfer Application T-13246 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-13246 is approved, the final order will include the following:*

1. *The change in points of appropriation and change in places of use proposed in Transfer Application T-13246 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 83439 and 88683, and any related decree.*
3. *Water right Certificates 83439 and 88683 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
4. *The quantity of water diverted at the new point of appropriation (POA 3), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 2).*
5. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
6. *The former place of use of the transferred rights shall no longer receive water under the rights.*
7. *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.*

8. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated in Salem, Oregon on

DEC 01 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.