



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

JANUARY 24, 2021

VIA CERTIFIED MAIL

DAVID WEINER
23151 LORENTZ RD.
PLYMOUTH, CA 95669

SUBJECT: Water Right Transfer Application T-13692

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13692. 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 503-986-0886 or Patrick.K.Starnes@wrd.state.or.us if I may be of assistance.

Kindest regards,

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

Tamera Smith
Transfer Caseworker
Transfer and Conservation Section

cc: Transfer Application file T-13692
Scott C. Ceciliani, District 14 Watermaster (*via e-mail*)
Marc Van Camp, 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-13692, Curry County) PROPOSING APPROVAL OF A CHANGE IN
) PLACE OF USE

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.

Applicant

DAVID WEINER
23151 LORENTZ RD.
PLYMOUTH, CA 95669

Findings of Fact

1. On April 28, 2021, DAVID WEINER filed an application to change the place of use under Certificate 36859. The Department assigned the application number T-13692.
2. Notice of the application for transfer was published on May 11, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. Certificate 36859 contains a scrivener's error in the location of the authorized point of diversion. The Certificate places both points of diversion in the NE NW quarter quarter, however, point of diversion 2 is located in the SW NE quarter quarter, as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
32 S	15 W	WM	21	SW NE	POD 2 - 960 FEET SOUTH AND 1600 FEET EAST FROM THE SW CORNER OF THE NENW CORNER OF SECTION 21

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 October 4, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13692 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 3, 2021, for the applicant to respond.
5. On October 27, 2021, the applicant requested that the Department extend the response deadline to December 3, 2021, to have time to get a report of ownership.
6. On November 8, 2021, the Department received the report of ownership, demonstrating that the applicant is authorized to pursue the transfer.
7. The portion of the right to be transferred is as follows:

Certificate: 36859 in the name of HAZEL MCKENZIE (perfected under Permit S-29631)
Use: IRRIGATION of 20.0 ACRES
Priority Date: APRIL 14, 1964
Rate: 0.18 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 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.
Source: ELK RIVER, a tributary of PACIFIC OCEAN

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
32 S	15 W	WM	21	NE NW	(POD 1) - 70 FEET NORTH AND 260 FEET EAST FROM THE SW CORNER OF NENW OF SECTION 21
32 S	15 W	WM	21	NE NW	(POD 2) - 960 FEET SOUTH AND 1600 FEET EAST FROM THE SW CORNER OF THE NENW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	15 W	WM	21	NW NE	8.3
32 S	15 W	WM	21	SW NE	3.5
32 S	15 W	WM	21	SE NE	0.1
32 S	15 W	WM	21	NE NW	8.0
32 S	15 W	WM	21	SE NW	0.1
TOTAL					20.0

8. Transfer Application T-13692 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
32 S	15 W	WM	16	NE SW	301	0.8
32 S	15 W	WM	16	SE SW	300/301	4.8
32 S	15 W	WM	16	NW SE	301	4.9
32 S	15 W	WM	16	SW SE	301	1.5
32 S	15 W	WM	21	NE SE	100	6.6
32 S	15 W	WM	21	SE SE	100	1.4
TOTAL						20.0

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

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 diversion structure and ditch 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-13692.
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.
13. All other application requirements are met.

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-13692 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.

If Transfer Application T-13692 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-13692 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 36859 and any related decree.*
3. *Water right Certificate 36859 is cancelled. A new certificate will be issued describing that portion of the rights not affected by this transfer.*

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 right shall no longer receive water under the right.*
6. *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 change and full beneficial use of the water.*
7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on **JAN 24 2022**



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.

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.