



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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FEBRUARY 5, 2021

VIA CERTIFIED MAIL

DAVID AND CHERYL BLANCHARD
9992 SARATOGA DR. NE
SALEM, OR 97305

SUBJECT: Water Right Transfer Application T-13691

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13691. 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 Statesman Journal 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 tamera.l.smith@oregon.gov or 503-979-9607 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-13691
Gregory J. Wacker, District 16 Watermaster (*via e-mail*)
John A. Short, 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-13691, Marion County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF APPROPRIATION,
)	A CHANGE IN CHARACTER OF USE, AND
)	CORRECTING SCRIVENER'S ERROR

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

DAVID L. AND CHERYL M. BLANCHARD
9992 SARATOGA DR. NE
SALEM, OR 97305

Findings of Fact

1. On April 27, 2021, DAVID L. AND CHERYL M. BLANCHARD filed an application for an additional point of appropriation and to change the character of use under Certificate 39893. The Department assigned the application number T-13691.
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. On September 22, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13691 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of October 22, 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 and requested a later completion date of 10/1/2027, citing time needed to complete water distribution system updates.

4. Further review of Transfer Application T-13691 revealed that the Certificate 39893 and final proof survey map inadvertently transposed the acreage in the NESE quarter-quarter for 24.5 acres and in the NWSE quarter-quarter for 0.2 acres. The correct acreage is in the NWSE quarter-quarter for 18.5 acres and in the NESE quarter-quarter for 6.2 acres; T6S, R1W, WM.

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

Certificate: 39893 in the name of BOB K. COMBS (perfected under Permit G-3052)
Use: IRRIGATION OF 12.2 ACRES
Priority Date: JANUARY 3, 1966
Rate: 0.13 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, and shall be limited to a diversion of 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: A WELL a tributary of SCISM CREEK (PUDDING RIVER)

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	1 W	WM	18	NW SE	57	WELL 1 - 520 FEET SOUTH AND 1260 FEET WEST FROM THE NE CORNER OF HALL DLC 57

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 W	WM	18	NE SW	57	6.2
6 S	1 W	WM	18	NW SE	57	6.0
TOTAL						12.2

6. Transfer Application T-13691 proposes an additional point of appropriation approximately 486.5 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	1 W	WM	18	NW SE	57	WELL 2 - 150 FEET SOUTH AND 1580 FEET WEST FROM THE NE CORNER OF DLC 57

7. Transfer Application T-13691 proposes to change the character of use to nursery use.

Transfer Review Criteria (OAR 690-380-4010)

8. 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.

9. 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-13691.
10. The proposed changes would not result in enlargement of the rights, if conditioned as follows: The rate of diversion for the change in character of use from irrigation to the proposed nursery operation use shall be limited to 0.13 cubic foot per second and shall be further limited to a total volume diverted of 30.5 acre feet (12.2 acres X 2.5 acre feet per acre) during the original season of use, being March 1 to October 31.
11. The proposed changes, as conditioned, would not result in injury to other water rights.
12. All other application requirements are met.

Determination and Proposed Action

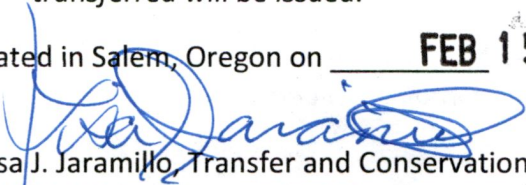
The additional point of appropriation and change in character of use proposed in Transfer Application T-13691 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-13691 is approved, the final order will include the following:

1. *The additional point of appropriation and change in character of use proposed in Transfer Application T-13691 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 39893 and any related decree.*
3. *Water right Certificate 39893 is cancelled. A new certificate will be issued describing those portions of the right not affected by this transfer.*
4. *A remaining right Certificate will be issued to describe the correction described in Finding of Fact No. 4.*
5. *The quantity of water diverted at the additional point of appropriation (Well 2), together with that diverted at the original point of appropriation (Well 1), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 1).*
6. *The rate of diversion for the change in character of use from irrigation to the proposed nursery operation use shall be limited to 0.13 cubic foot per second and shall be further limited to a total volume diverted of 30.5 acre feet (12.2 acres X 2.5 acre feet per acre) during the original season of use, being March 1 to October 31.*

7. *The change in character of use from irrigation to the proposed nursery use shall be further limited such that:*
- a) *The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.13 cubic foot per second per acre and 30.5 acre feet during the irrigation season of each year March 1 to October 31.*
 - b) *For the irrigation of containerized nursery plants, the amount of water diverted is limited to 0.13 cubic foot per second (or its equivalent) and 30.5 acre feet during the irrigation season of each year, March 1 to October 31.*
 - c) *For the irrigation of in-ground nursery plants, the amount of water diverted is limited to 0.13 cubic foot per second (or its equivalent) and 30.5 acre feet during the irrigation season of each year, March 1 to October 31.*
 - d) *For the irrigation of any other crop, the amount of water diverted is limited to 0.13 cubic foot per second (or its equivalent) and 30.5 acre feet during the irrigation season of each year. The use of water for irrigation of any other crop shall be limited to 12.2 acres.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2027**. 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 **FEB 15 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 Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

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Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>