

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13495, Baker County	)	PROPOSING APPROVAL FOR AN
	)	ADDITIONAL POINT OF DIVERSION

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

WEITZ & COMPANY, INC.
PO BOX 854
BAKER CITY, OR 97814

Findings of Fact

1. On July 23, 2020, WEITZ & COMPANY, INC. filed an application for an additional point of diversion under Certificate 4386. The Department assigned the application number T-13495.
2. Notice of the application for transfer was published on August 4, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 10, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13495 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 11, 2021, for the applicant to respond. The applicant(s) 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 December 14, 2020, the applicant requested to extend the date for completion to October 1, 2023.

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. On February 2, 2021, the Department received a report of ownership from AmeriTitle identifying a Wayne C. Lewis and Gloria G. Lewis as owners of the property involved with Certificate 4386. The Department contacted the applicant by written correspondence to notify the applicant of a deficiency in the application. The report of ownership did not satisfy the rule requirement under OAR 690-380-4010(5)(c). The Department sent a copy of an Affidavit of Consent by Deeded Landowner and requested that the deficiency be resolved by March 2, 2021.
6. On March 8, 2021, the Department contacted the applicant to check the status of the Affidavit of Consent, and requested that the deficiency be resolved by March 22, 2021.
7. On March 29, 2021, the applicant contacted the Department. The applicant stated that Wayne C. Lewis and Gloria G. Lewis are former owners of the property, who were experiencing health issues that prevented the change in ownership to be completed in a timely manner.
8. On January 29, 2022, the applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
9. The portion of the right to be transferred is as follows:

Certificate: 4386 in the name of MILTON S. OSBORN (confirmed by Powder River decree)

Use: IRRIGATION of 28.0 ACRES

Priority Date: 1864 for 12.0 ACRES and 1866 for 16.0 ACRES

Rate: 1/40 of one cubic foot per second per acre; and shall be subject to all other conditions and limitations contained in said decree

Source: PINE CREEK, tributary of POWDER RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Not specified in certificate					

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Priority Date
8 S	39 E	WM	27	SE NW	12.0	1864
8 S	39 E	WM	27	SE NW	16.0	1866

10. The Department received information from the applicant that better describes the location of the authorized points of diversion for Certificate 4386 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	39 E	WM	27	SW NW	POD 1 - 1070 FEET NORTH AND 2650 FEET WEST FROM THE C1/4 CORNER OF SECTION 27
8 S	39 E	WM	27	SW NW	POD 2 - 1100 FEET NORTH AND 2650 FEET WEST FROM THE C1/4 CORNER OF SECTION 27

11. Transfer Application T-13495 proposes an additional point of diversion approximately 1958 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	39 E	WM	27	SE NW	APOD - 470 FEET NORTH AND 1220 FEET WEST FROM THE C1/4 CORNER OF SECTION 27

12. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

13. 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.
14. 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-13495.
15. The proposed change would not result in enlargement of the right.
16. The proposed change would not result in injury to other water rights.
17. All other application requirements are met.

Determination and Proposed Action

The additional point of diversion proposed in Transfer Application T-13495 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-13495 is approved, the final order will include the following:

- 1. The additional point of diversion proposed in Transfer Application T-13495 is 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 4386 and any related decree.*
- 3. Water right Certificate 4386 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 additional point of diversion (APOD), together with that diverted at the original points of diversion (POD 1 and POD 2), shall not exceed the quantity of water lawfully available at the original points of diversion (POD 1 and POD 2).*
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 diversion.*
 - 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. *Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*
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 change and full beneficial use of the water.*

8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on

MAR 21 2022



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@water.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.