



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

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April 26, 2022

VIA CERTIFIED MAIL AND E-MAIL

THOMAS D. JONES
PO BOX 71
ADEL, OR 97620

SUBJECT: Water Right Transfer Application T-13649

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13649. 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 tamera.l.smith@water.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 large, sweeping flourish above the name.

Tamera Smith
Transfer Caseworker
Transfer and Conservation Section

cc: Transfer Application file T-13649
Matt A. Anderson, District 12 Watermaster (*via e-mail*)
Hollie Cannon and Troy Brandt, Agents 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-13649, Lake County)	PROPOSING APPROVAL OF CHANGES IN
)	POINTS 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

THOMAS D. JONES
PO BOX 71
ADEL, OR 97620

Findings of Fact

1. On March 15, 2021, THOMAS D. JONES filed an application to change the points of diversion under Certificates 9428 and 66882. The Department assigned the application number T-13649.
2. Notice of the application for transfer was published on March 30, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 23, 2021, the agent for the applicant revised the tables and map to read the correct township.
4. On January 27, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13649 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 26, 2022, for the applicant to respond. The agent for 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.

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.

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

Certificate: 9428 in the name of MRS. MAGGIE MESSNER (confirmed by Warner Lakes Decree)
Use: IRRIGATION of 51.6 ACRES
Priority Date: 1892
Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE-FORTIETH of a cubic foot per second per acre of land irrigated prior to June 15th and ONE-EIGHTIETH of a cubic foot per second per acre of land irrigated after June 15th, of each year, with a total limitation during each irrigation season of 3.0 acre feet per acre.
Source: DEEP CREEK

Authorized Point of Diversion:

Measured Distances
<i>Not Described</i>

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	24 E	WM	20	NE NE	6.6
39 S	24 E	WM	21	NE NW	23.5
39 S	24 E	WM	21	NW NW	21.5
TOTAL					51.6

6. The agent for the applicant has provided measured distances to better describe the location of the authorized point of diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	24 E	WM	20	SE NW	POD #2 – 1920 FEET SOUTH AND 2900 FEET WEST FROM THE NE CORNER OF SECTION 20

7. Transfer Application T-13649 proposes to move the authorized point of diversion approximately 685 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	24 E	WM	20	SE NW	POD #1 – 2190 FEET SOUTH AND 3330 FEET WEST FROM THE NE CORNER OF SECTION 20

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

Certificate: 66882 in the name of EARL E. ROGERS (perfected under Permit S-43333)
Use: IRRIGATION of 3.7 ACRES
Priority Date: JUNE 22, 1978

Rate: 0.10 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-FORTIETH 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 for each acre irrigated during the irrigation season of each year.
Source: DEEP CREEK, a tributary of WARNER BASIN

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
39 S	23 E	WM	15	NW SE		1820 FEET NORTH AND 2050 FEET WEST FROM THE SE CORNER OF SECTION 15
39 S	24 E	WM	20	SE NW	6	1920 FEET SOUTH AND 2900 FEET WEST FROM THE NE CORNER OF SECTION 20

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
39 S	24 E	WM	20	NE NE	1	2.4
39 S	24 E	WM	21	NW NW		1.3
TOTAL						3.7

9. Transfer Application T-13649 proposes to move the authorized points of diversion approximately 685.0 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	24 E	WM	20	SE NW	POD #1 – 2190 FEET SOUTH AND 3330 FEET WEST FROM THE NE CORNER OF SECTION 20

10. 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)]

- 11. 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 rights are subject to forfeiture under ORS 540.610.
- 12. A diversion structure and ditch 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-13649.

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

Determination and Proposed Action

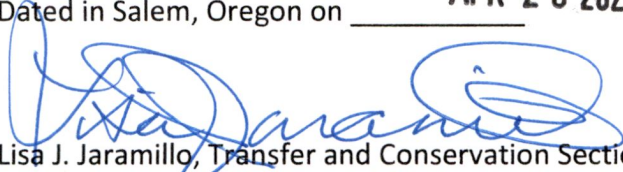
The changes in points of diversion proposed in Transfer Application T-13649 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-13649 is approved, the final order will include the following:

1. *The change in points of diversion proposed in Transfer Application T-13649 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 9428, 66882, and any related decree.*
3. *Water right Certificates 9428 and 66882 are cancelled. A new certificate will be issued describing that portion of the right, Certificate 66882, not affected by this transfer.*
4. *The quantity of water diverted at the new point of diversion (POD #1), shall not exceed the quantity of water lawfully available at the original point of diversion (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 point of diversion (new).*
 - 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 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 APR 26 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 503-979-9607 or tamera.l.smith@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.

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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.