



Oregon
Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

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April 21, 2022

VIA CERTIFIED MAIL AND E-MAIL

Daniel and Sheila Sullenger,
Ronald and Linda Sullenger
6090 Juniper St. NE
Salem, OR 97305

SUBJECT: Water Right Transfer Application T-13460

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13460. 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.

Please do not hesitate to contact me at 503-986-0892 or Joan.M.Smith@wrd.state.or.us if I may be of assistance.

Sincerely,

Joan Smith

Transfer Specialist

Transfer and Conservation Section

cc: Transfer Application T-13460
Gregory J. Wacker, District 16 Watermaster (*via e-mail*)
Jeanne Boatwright, Agent 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-13460, Marion County)	PROPOSING APPROVAL OF CHANGES IN
)	PLACE OF USE AND CHARACTER 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.

Applicants

DANIEL AND SHEILA SULLENGER,
RONALD AND LINDA SULLENGER
6090 JUNIPER ST NE
SALEM, OR 97305

Findings of Fact

1. On June 4, 2020, Daniel and Sheila Sullenger, and Ronald and Linda Sullenger filed an application to change the place of use and to change the character of use under Certificate 36111. The Department assigned the application number T-13460.
2. Notice of the application for transfer was published on June 16, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13460 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of July 9, 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 right to be transferred is as follows:

Certificate: 36111 in the name of EDWARD CURTIS (perfected under Permit S-30400)
Use: RECREATION (FISHING AND SWIMMING)
Priority Date: APRIL 27, 1965
Rate: 0.01 CUBIC FOOT PER SECOND
Source: UNNAMED CR AND RESERVOIR CONSTRUCTED UNDER APPL. NO. R-40803 PERMIT R-4570, tributary of LITTLE PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
7 S	2 W	WM	4	SW NE	2	1300 FEET SOUTH AND 3600 FEET EAST FROM THE SE CORNER OF DLC 54

Authorized Place of Use:

RECREATION (FISHING AND SWIMMING)					
Twp	Rng	Mer	Sec	Q-Q	GLot
7 S	2 W	WM	4	SW NE	2

5. Transfer Application T-13460 proposes to change the character of use to Irrigation.
 6. Transfer Application T-13460 proposes to change in place of use to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
7 S	2 W	WM	4	NW NE		47	0.20
7 S	2 W	WM	4	SW NE		47	19.70
7 S	2 W	WM	4	SW NE	2		0.10
7 S	2 W	WM	4	SE NE		47	0.04
Total:							20.04

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

7. 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.
 8. 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-13460.
 9. The proposed changes would not result in enlargement of the right if conditioned as follows:

The use of water for the proposed irrigation use shall be limited to a rate of diversion not to exceed 0.01 cubic foot per second and further limited to a quantity of water diverted not to exceed 1.24 acre feet during the irrigation season of March 1 to October 31, of each year.

10. Certificate 36111 does not specify a period of allowed use. However, the Willamette Basin Program establishes the irrigation season for the area as March 1 to October 31.
11. The proposed changes would not result in injury to other water rights.
12. All other application requirements are met.

Determination and Proposed Action

The change in place of use and change in character of use proposed in Transfer Application T-13460 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-13460 is approved, the final order will include the following:

1. *The change in place of use and change in character of use proposed in Transfer Application T-13460 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 36111 and any related decree.*
3. *Water right Certificate 36111 is cancelled.*
4. *The former place of use of the transferred right shall no longer receive water under the right.*
5. *The use of water for irrigation use is limited to a rate of diversion not to exceed 0.01 cubic foot per second and further limited to a quantity of water diverted not to exceed 1.24 acre feet during the irrigation season of March 1 to October 31, of each year.*
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 changes 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

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 Joan Smith. If you have questions about the information in this document, you may reach me at 503-986-0892 or Joan.M.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.

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.