



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

June 1, 2022

VIA E-MAIL

T AND K LLC
ATTN: TED SESTER
24200 SE HWY 212
DAMASCUS, OR 97089

SUBJECT: Water Right Transfer Application T-13348

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13348. 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.

Please do not hesitate to contact me at 503-979-3129 or arla.l.davis@water.oregon.gov if I may be of assistance.

Sincerely,

Arla L Davis

Arla L Davis
Transfer Specialist
Transfer and Conservation Section

cc: T-13348
Amy J. Landvoigt, District 20 Watermaster (*via e-mail*)
Ted Ressler, GSI Water Solutions, 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-13348, Clackamas County)	PROPOSING APPROVAL OF ADDITIONAL
)	POINTS OF APPROPRIATION

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

T AND K LLC
ATTN: TED SESTER
24200 SE HWY 212
DAMASCUS, OR 97089

Findings of Fact

1. On January 15, 2020, T AND K LLC, ATTN: TED SESTER, filed an application for additional points of appropriation under Certificate 94408. The Department assigned the application number T-13348.
2. Notice of the application for transfer was published on January 28, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 8, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13348 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 8, 2022, for the applicant to respond. 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.

4. The right to be transferred is as follows:

Certificate: 94408 in the name of T AND K LLC (perfected under Permit G-1645)

Use: IRRIGATION of 47.0 ACRES

Priority Date: JULY 20, 1960

Rate: 0.37 CUBIC FOOT PER SECOND (CFS), FURTHER LIMITED TO 0.33 CFS FROM WELL 1 AND 0.27 CFS FROM WELL2, NOT TO EXCEED 0.37 CFS IN ANY COMBINATION FROM THE TWO WELLS

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 ONE-EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: TWO WELLS, a tributary of DEEP CREEK (CLACKAMAS RIVER)

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	3 E	WM	10	NE NE	WELL 1 - 400 FEET SOUTH AND 613 FEET WEST FROM THE NE CORNER OF SECTION 10
2 S	3 E	WM	10	NE NE	WELL 2 - 448 FEET SOUTH AND 87 FEET WEST FROM THE NE CORNER OF SECTION 10

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	3 E	WM	10	NE NE	10.9
2 S	3 E	WM	10	SE NE	36.1
Total					47.0

5. Transfer Application T-13348 proposes additional points of appropriation with approximate distance from the existing points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distances from Existing Points of Appropriation
2 S	3 E	WM	10	NE NE	WELL 3 - 450 FEET SOUTH AND 45 FEET WEST FROM THE NE CORNER OF SECTION 10	WELL 1 - 566 FEET WELL 2 - 56 FEET
2 S	3 E	WM	10	NE NE	WELL 4 - 505 FEET SOUTH AND 635 FEET WEST FROM THE NE CORNER OF SECTION 10	WELL 1 - 107 FEET WELL 2 - 553 FEET
2 S	3 E	WM	10	NE NE	WELL 5 - 1500 FEET SOUTH AND 200 FEET WEST FROM THE NE CORNER OF SECTION 10	WELL 1 - 1173 FEET WELL 2 - 1057 FEET

6. The Department's Groundwater Section requires the following condition in order to ensure that the additional point of appropriation (Well 5) proposed under Transfer Application T-13348 develops the same source:

The proposed construction of APOA Well 5, yet to be drilled, would leave the open interval much larger than the existing wells here, extending from 70-250' below land surface. In order to produce from the upper portions of the Springwater, proposed APOA well 5 shall be constructed to have an open interval extending no deeper than 200' below land surface.

Transfer Review Criteria (OAR 690-380-4010)

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 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-13348.
9. The proposed change as conditioned would not result in enlargement of the right.
10. The proposed change would not result in injury to other water right.
11. All other application requirements are met.

Determination and Proposed Action

The additional points of appropriation proposed in Transfer Application T-13348 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.

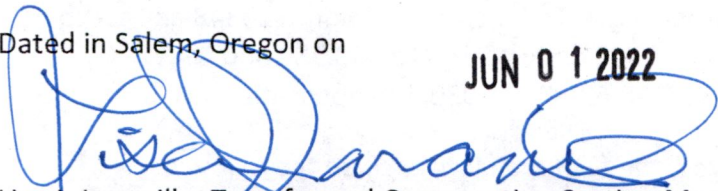
If Transfer Application T-13348 is approved, the final order will include the following:

1. *The additional points of appropriation proposed in Transfer Application T-13348 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 94408 and any related decree.*
3. *Water right Certificate 94408 is cancelled.*
4. *The quantity of water diverted at the proposed additional points of appropriation (WELL 3, WELL 4, and WELL 5), together with that diverted at the original points of appropriation (WELL 1 and WELL 2), shall not exceed the quantity of water lawfully available at the original points of appropriation (WELL 1 and WELL 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 appropriation.*
 - 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. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation, new and existing.*
7. *Prior to water use from proposed APOA Well 5, the well shall be constructed to have an open interval extending no deeper than 200' below land surface.*
8. *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.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on

JUN 01 2022


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Arla L Davis. If you have any questions about the information in this document, you may reach me at 503-979-3129 or arla.l.davis@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.

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.