



Oregon

Kate Brown, Governor

Water Resources Department
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Salem, OR 97301
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June 6, 2022

VIA CERTIFIED MAIL AND E-MAIL

LOANN MACDOUGALL
52708 SUNQUIST ROAD
MILTON FREEWATER, OR 97862

SUBJECT: Water Right Transfer Application T-13526

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13526. 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-13526
Greg Silbernagel, District 23 Watermaster (*via e-mail*)
Terry Sprecher, 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-13526, Umatilla County)	PROPOSING APPROVAL OF A CHANGE IN
)	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

RON AND LOANN MACDOUGALL
52708 SUNQUIST ROAD
MILTON FREEWATER, OR 97862

Findings of Fact

1. On September 29, 2020, RON AND LOANN MACDOUGALL filed an application to change the point of diversion under Certificate 23. The Department assigned the application number T-13526.
2. Notice of the application for transfer was published on September 29, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 4, 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 4, 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: 23 in the name of NICK GROSGEBAUER (confirmed by East Mud Creek Decree)
Use: IRRIGATION of 20.0 ACRES
Priority Date: 1881
Rate: 0.38 CUBIC FOOT PER SECOND
Period of Use: April 1 to September 20
Source: EAST BRANCH OF MUD CREEK, tributary of the WALLA WALLA RIVER

Authorized Point of Diversion:

POD Location
EAST BRANCH OF MUD CREEK

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	22	SW NW	20.00

5. Transfer Application T-13526 proposes to move the authorized point of diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
6 N	35 E	WM	22	SW NW	700	POD #1 - 344 FEET NORTH AND 549 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 22

6. The Oregon Department of Fish and Wildlife has determined that the diversion is not currently equipped with an appropriate fish screen, but a fish screen may be required in the future at the new point of diversion to prevent fish from entering the diversion.

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

- 7. Water has been used within the last five years. 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-13526.
- 9. The proposed change would not result in enlargement of the right.
- 10. The proposed change would not result in injury to other water rights.
- 11. All other application requirements are met.

Determination and Proposed Action

The change in point of diversion proposed in Transfer Application T-13526 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.

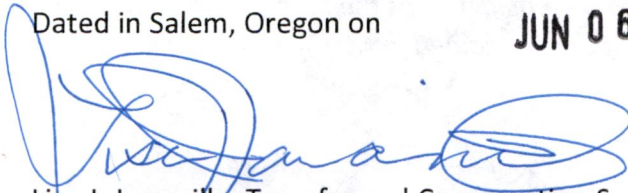
If Transfer Application T-13526 is approved, the final order will include the following:

- 1. The change in point of diversion proposed in Transfer Application T-13526 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 23 and any related decree.*
- 3. Water right Certificate 23 is cancelled.*
- 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.*
- 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. The Oregon Department of Fish and Wildlife (ODFW) may require the water user to install an approved fish screen at the new point of diversion within one year after receiving written notification that a fish screen is required. Once installed the water user shall maintain and operate the fish screen at the new point of diversion according to ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.*
- 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

JUN 06 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.