



# Oregon

Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

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JULY 7, 2022

VIA CERTIFIED MAIL AND E-MAIL

GARY SHEPHERD  
OFFICE OF METRO ATTORNEY  
600 NE GRAND AVE  
PORTLAND, OR 97232

SUBJECT: Water Right Transfer Application T-13828

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13828. 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 Oregonian 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 [tamera.l.smith@water.oregon.gov](mailto:tamera.l.smith@water.oregon.gov) or 503-979-9607 may be of assistance.

Kindest regards,



Tamera Smith  
Transfer Caseworker  
Transfer and Conservation Section

cc: Transfer Application file T-13828  
Amy J. Landvoigt, District 20 Watermaster (*via e-mail*)  
Adam S. Zucker, 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-13828, Multnomah County	)	PROPOSING APPROVAL OF A CHANGE IN
	)	POINT 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**

GARY SHEPHERD  
OFFICE OF METRO ATTORNEY  
600 NE GRAND AVE.  
PORTLAND, OR 97232

**Findings of Fact**

1. On September 16, 2021, GARY SHEPHERD, OFFICE OF METRO ATTORNEY, filed an application to change the point of appropriation under Certificate 91809. The Department assigned the application number T-13828.
2. Notice of the application for transfer was published on October 5, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 14, 2021, the Department contacted the agent for the applicant requesting revisions of the measured distances listed in table 1 and of the quarter-quarter locations in table 2 of the transfer application.
4. On December 21, 2021, the agent for the applicant sent a revised table 1, table 2, and corresponding map, which allowed the Department to proceed processing with the transfer.
5. On March 31, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13828 to the applicant. The draft Preliminary

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.

Determination cover letter set forth a deadline of April 30, 2022, for the applicant to respond.

6. On April 11, 2022, the applicant pointed out that the transfer is to replace Point of Appropriation (POA) #2 with POA #3, and provided a revised map to better illustrate the change.
7. On April 20, 2022, 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.
8. The right to be transferred is as follows:

**Certificate:** 91809 in the name of METRO, ATTN: LYDIA NEILL (perfected under Permit G-10490)

**Use:** IRRIGATION of 88.9 ACRES

**Priority Date:** MAY 1, 1985

**Rate:** 1.1 CUBIC FEET 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-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 IN THE WILLAMETTE BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	2 E	WM	35	SW NE	POA NO. 1 (ORIGINAL) - 90 FEET NORTH AND 100 FEET EAST FROM THE CENTER 1/4 CORNER OF SECTION 35
1 N	2 E	WM	36	SE NW	POA NO. 2 (ADDITIONAL) - 165 FEET NORTH AND 84 FEET EAST FROM THE CENTER W 1/16 OF SECTION 36

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	2 E	WM	35	NE NE	14.0
1 N	2 E	WM	35	NW NE	1.0
1 N	2 E	WM	35	SW NE	16.3
1 N	2 E	WM	35	SE NE	14.6
1 N	2 E	WM	36	NE NW	7.4
1 N	2 E	WM	36	NW NW	16.8
1 N	2 E	WM	36	SW NW	13.8
1 N	2 E	WM	36	SE NW	5.0
TOTAL					88.9

9. Transfer Application T-13828 proposes to move the authorized point of appropriation of Well #2 to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from Authorized Points of Appropriation in Miles (mi.) or Feet (ft.)	
						POA #1	POA #2
1 N	2 E	WM	36	SE NW	POA #3 – 140 FEET NORTH AND 1285 FEET WEST FROM THE CENTER QUARTER OF SECTION 36	POA #1	POA #2
						0.75 mi.	77.7 ft.

**Transfer Review Criteria (OAR 690-380-4010)**

10. 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.
11. 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-13828.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.
14. All other application requirements are met.

**Determination and Proposed Action**

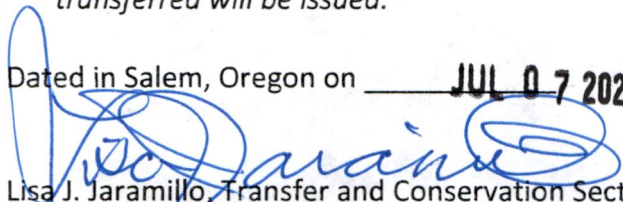
The change in point of appropriation proposed in Transfer Application T-13828 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

*If Transfer Application T-13828 is approved, the final order will include the following:*

1. *The change in point of appropriation proposed in Transfer Application T-13828 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 91809, and any related decree.*
3. *Water right Certificate 91809 is cancelled.*
4. *The quantity of water diverted at the new point of appropriation (POA #3), shall not exceed the quantity of water lawfully available at the original points of appropriation (POA #1 and POA #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 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 point of appropriation.*
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       **JUL 07 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](mailto: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.*

**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.