



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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July 14, 2022

VIA CERTIFIED MAIL AND E-MAIL

Applicant

YOUTH STIMULUS PACKAGE, LLC
RANDALL HARVEY – MANAGING MEMBER
3825 WEST COURT STREET
PASCO, WA 99301

SUBJECT: Water Right Transfer Application T-13591

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13591. 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.

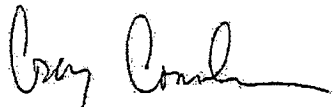
A public notice is being published in the Department's weekly publication and in the East Oregonian newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in 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 corey.a.courchane@water.oregon.gov or (503) 979-3917, if I may be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Corey Courchane". The signature is fluid and cursive, with a long horizontal stroke at the end.

Corey Courchane
Allocation of Conserved Water
Transfer and Conservation Section

cc: Transfer Application file T-13591
Gregory M. Silbernagel, District 5 Watermaster (*via e-mail*)
Molly Reid, 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-13591, Umatilla County)	PROPOSING APPROVAL OF CHANGES IN
)	POINTS OF DIVERSION AND CHANGES IN
)	PLACES 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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

YOUTH STIMULUS PACKAGE, LLC
RANDALL HARVEY – MANAGING MEMBER
3825 WEST COURT STREET
PASCO, WA 99301

Findings of Fact

1. On January 4, 2021, YOUTH STIMULUS PACKAGE, LLC, RANDALL HARVEY – MANAGING MEMBER filed an application to change the points of diversion and to change the places of use under Certificates 13116 and 13161, and to change the places of use under Certificates 13127, 13178, and 32595. The Department assigned the application number T-13591.
2. Notice of the application for transfer was published on January 26, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

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.

3. On June 16, 2021, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of deficiencies in the application. The Department's Watermaster review indicated the applicant was appropriating from an unauthorized point of appropriation, and that non-use of water within the previous 5 years had occurred under Certificate 32595. The review also requested for additional evidence of use under Certificates 13116 and 13161, as the lands were heavily eroded by the flood of 2020, and large blackberry bushes took over the property. The Watermaster was also concerned that there was an enlargement of Certificates 13116 and 13161, due to surface water being applied outside the place of use through drip systems. The Department requested that the deficiencies be resolved by July 16, 2021.
4. On July 12, 2021, the Department received an Affidavit for the Voluntary Cancellation of the entirety of Water Right Certificate 32595 from Randall Harvey, removing Certificate 32595 from Transfer Application T-13591, and submitted additional evidence of use for Certificates 13116 and 13161.
5. On November 5, 2021, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of a deficiency in the application. The affidavit that was submitted on July 12, 2021, did not include a deed for the lands appurtenant to Certificate 32595, or a map clearly identifying the abandoned right. The Department requested that the deficiency be resolved by December 8, 2021.
6. On November 19, 2021, the Department received a deed for the lands appurtenant to Certificate 32595, and a map clearly identifying the abandoned right, resolving the deficiency.
7. On February 2, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-13591 to the applicant. The evidence of use supporting documentation submitted with the application, did not provide sufficient evidence, that water was used beneficially within the previous five years prior to submittal of the transfer application, under Certificates 13116 and 13161. The draft Preliminary Determination cover letter set forth a deadline of March 7, 2022, for the applicant to respond.
8. On March 1, 2022, the Department received an Evidence of Use Affidavit, that included a statement from a neighboring landowner, which described flood irrigation taking place on the place of use in question within the previous five years prior to the filing of T-13591.
9. On March 24, 2022, 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.

10. The portion of the first right to be transferred is as follows:

Certificate: 13116 in the name of L. PAULSEN (confirmed by WALLA WALLA RIVER Decree)
Use: IRRIGATION of 5.2 ACRES
Priority Date: 1887
Rate: ONE AND ONE-HALF MINER'S INCHES PER ACRE MEASURED AT THE POINT OF DIVERSION
Source: WALLA WALLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
<i>Not specified in certificate</i>				

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	36 E	WM	25	SE SW	5.2

11. The Department received information from the applicant that describes the location of the authorized point of diversion for Certificate 13116 as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 N	36 E	WM	36	NW NE	POD 1 - LATITUDE: N45°52.462' LONGITUDE: W118°15.248'

12. Transfer Application T-13591 proposes to move the authorized point of diversion approximately 1.3 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	36 E	WM	26	SW NE	POD 2 - 750 FEET NORTH AND 1085 FEET EAST FROM THE CENTER OF SECTION 26

13. Transfer Application T-13591 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	36 E	WM	26	SW NE	5.2

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

Certificate: 13127 in the name of H. POULSEN (confirmed by WALLA WALLA RIVER Decree)
Use: IRRIGATION of 5.6 ACRES
Priority Date: 1894 for 3.6 ACRES, and 1907 for 2.0 ACRES
Rate: ONE AND ONE-HALF MINER'S INCHES PER ACRE MEASURED AT THE POINT OF DIVERSION
Source: SOUTH FORK WALLA WALLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
<i>Not specified in certificate</i>				

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	36 E	WM	26	SW NE	5.6

15. The Department received information from the applicant that describes the location of the authorized point of diversion for Certificate 13127 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	36 E	WM	26	SW NE	POD 2 - 750 FEET NORTH AND 1085 FEET EAST FROM THE CENTER OF SECTION 26

16. Transfer Application T-13591 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	36 E	WM	26	NW NE	2.1
5 N	36 E	WM	26	SW NE	1.5
5 N	36 E	WM	26	SW NE	2.0
Total					5.6

17. The portion of the third right to be transferred is as follows:

Certificate: 13161 in the name of GUY ROBINSON (confirmed by WALLA WALLA RIVER Decree)
Use: IRRIGATION of 2.4 ACRES
Priority Date: 1888
Rate: ONE AND ONE-HALF MINER'S INCHES PER ACRE MEASURED AT THE POINT OF DIVERSION
Source: WALLA WALLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
<i>Not specified in certificate</i>				

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	36 E	WM	25	SE SW	2.4

18. The Department received information from the applicant that describes the location of the authorized point of diversion for Certificate 13116 as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 N	36 E	WM	36	NW NE	POD 1 - LATITUDE: N45°52.462' LONGITUDE: W118°15.248'

19. Transfer Application T-13591 proposes to move the authorized point of diversion approximately 1.3 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	36 E	WM	26	SW NE	POD 2 - 750 FEET NORTH AND 1085 FEET EAST FROM THE CENTER OF 26

20. Transfer Application T-13591 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	36 E	WM	26	NW NE	2.3
5 N	36 E	WM	26	SW NE	0.1
Total					2.4

21. The portion of the fourth right to be transferred is as follows:

Certificate: 13178 in the name of THOMAS H. RUHBERG (confirmed by WALLA WALLA RIVER Decree)
Use: IRRIGATION of 0.8 ACRE
Priority Date: 1902
Rate: ONE AND ONE-HALF MINER'S INCHES PER ACRE MEASURED AT THE POINT OF DIVERSION
Source: SOUTH FORK of WALLA WALLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
<i>Not specified in certificate</i>				

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	36 E	WM	26	NW NE	0.8

22. The Department received information from the applicant that describes the location of the authorized point of diversion for Certificate 13178 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	36 E	WM	26	SW NE	POD 2 - 750 FEET NORTH AND 1085 FEET EAST FROM THE CENTER OF SECTION 26

23. Transfer Application T-13591 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	36 E	WM	26	SW NE	0.8

24. 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)]

- 25. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
- 26. A pump, pipeline, and sprinkler system 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-13591.
- 27. The proposed changes would not result in enlargement of the rights.
- 28. The proposed changes would not result in injury to other water rights.
- 29. All other application requirements are met.

Cancellation of a Water Right

30. On July 12, 2021, an affidavit certifying that a water right has been abandoned and requesting cancellation of the right was received from Randall Harvey, Youth Stimulus Package, LLC. The right to be cancelled is as follows:

Certificate: 32595 in the name of LEON HUBER (developed under Permit G-2262)
Use: IRRIGATION of 8.9 ACRES
Priority Date: DECEMBER 5, 1962
Rate: 0.11 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, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL, a tributary of WALLA WALLA RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	36 E	WM	26	SW NE	NORTH 10° 08' 10" EAST 898.9 FEET FROM THE CENTER OF SECTION 26

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	36 E	WM	26	SW NE	8.2
5 N	36 E	WM	26	SE NE	0.7
Total					8.9

Determination and Proposed Action

The changes in points of diversion and changes in places of use proposed in Transfer Application T-13591 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

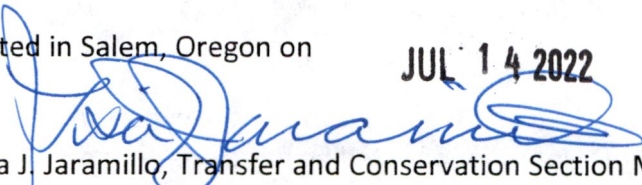
If Transfer Application T-13591 is approved, the final order may include the following:

1. *The changes in points of diversion and changes in places of use proposed in Transfer Application T-13591 are approved. The portion of the right that has been abandoned is cancelled.*
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 13116, 13127, 13161, and 13178 and any related decree.*
3. *Water right Certificates 13116, 13127, 13161, and 13178 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer and cancellation.*
4. *The quantity of water, as authorized by Certificates 13116 and 13161, diverted at the new point of diversion (POD 2), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 1).*
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 and existing).*
 - 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. *The former place of use of the transferred rights shall no longer receive water under the rights.*
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 changes and full beneficial use of the water.*
9. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on

JUL 14 2022


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

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-979-3917 or corey.a.courchane@water.oregon.gov

Protests should be addressed to the attention of Water Rights Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>