

# Oregon

Kate Brown, Governor

## Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

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August 31, 2022

VIA CERTIFIED MAIL AND E-MAIL

TIM MELVILLE  
84887 JOSEPH HWY  
ENTERPRISE, OR 97828

SUBJECT: Water Right Transfer Application T-13656

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13656. 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 503-986-0892 or [Joan.M.Smith@water.oregon.gov](mailto:Joan.M.Smith@water.oregon.gov) if I may be of assistance.

Sincerely,

Joan Smith  
Transfer Specialist  
Transfer and Conservation Section

cc: T-13656  
David D. Bates, District 7 Watermaster (via e-mail)

**BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE  
STATE OF OREGON**

In the Matter of Transfer Application            )     PRELIMINARY DETERMINATION  
T-13656, Wallowa County                     )     PROPOSING APPROVAL OF A CHANGE 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.

**Applicant**

TIM MELVILLE  
84887 JOSEPH HWY  
ENTERPRISE, OR 97828

**Findings of Fact**

1. On March 22, 2021, TIM MELVILLE filed an application for a change in places of use under Certificates 34493, 7086, and 48403. The Department assigned the application number T-13656.
2. Notice of the application for transfer was published on April 6, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The original application requested to change the place of use for a portion of Certificate 48403, however, Transfer application T-13459 changed a portion of the right as evidenced in Volume 121, Page 120, the remaining right was issued Certificate 95525. This application involves a portion of the remaining right Certificate 95525 and will work off this Certificate.
4. On March 7, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13656 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 7, 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.

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

**Certificate:** 34493 in the name of LEONARD J. MELVILLE (perfected under Permit S-28430)

**Use:** IRRIGATION of 3.7 ACRES

**Priority Date:** JANUARY 28, 1963

**Rate:** 0.09 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-FORTIETH 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 3.5 acre-feet per acre for each acre irrigated during the irrigation season of each year; provided further that the right to use of water is limited to the period when the flow of the Lower Grande Ronde River is more than 300 c.f.s. at USGS Gage No. 3325; and more than 420 c.f.s. at Oregon-Washington border;

**Source:** HURRICANE CREEK a tributary of WALLOWA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	44 E	WM	3	NE NE	SOUTH 76 DEGREES 2 MINUTES WEST 49 FEET FROM THE NE CORNER OF SECTION 3

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	44 E	WM	6	NE SE	3.7

6. Transfer Application T-13656 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	44 E	WM	5	SW SW	3.7

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

**Certificate:** 7086 in the name of A. G. VARNER (perfected under Permit S-5765)

**Use:** IRRIGATION of 3.0 ACRES

**Priority Date:** JANUARY 30, 1923

**Rate:** 0.036 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, or its equivalent in case of rotation.

**Source:** HURRICANE CREEK a tributary of WALLOWA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	44 E	WM	34	SE SE	NOT DESCRIBED ON CERTIFICATE

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	44 E	WM	22	NE SE	3.0

8. Transfer Application T-13656 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	44 E	WM	5	SW SW	3.0

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

**Certificate:** 95525 in the name of ALDER SLOPE DITCH CO. (confirmed by Wallowa River Decree)

**Use:** IRRIGATION of 3.6 ACRES

**Priority Date:** NOVEMBER 30, 1901

**Rate:** 0.04 CUBIC FOOT PER SECOND

**Limit/Duty:** The amount of water to which this right is entitled is limited to an amount actually used beneficially and shall not exceed 1.5 acre feet per acre during any period of 30 days prior to July 31<sup>st</sup> of each year, and thereafter not to exceed 1 acre foot per acre during the entire remainder of the irrigation season.

**Source:** HURRICANE CREEK, tributary of WALLOWA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	44 E	WM	3	NE NE	ALDER SLOPE DITCH - SOUTH 76 DEGREES 02 MINUTES WEST 49 FEET FROM THE NE CORNER OF SECTION 3

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	TRACT NO.
2 S	44 E	WM	5	NW SW	0.9	23
2 S	44 E	WM	5	SW SW	0.9	23
2 S	44 E	WM	22	NE SE	1.8	28
Total:					3.6	

10. Transfer Application T-13656 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	44 E	WM	5	SW SW	3.6

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

11. 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 rights are subject to forfeiture under ORS 540.610.

12. 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-13656.
13. The proposed change would not result in enlargement of the rights.
14. The proposed change would not result in injury to other water rights.
15. All other application requirements are met.

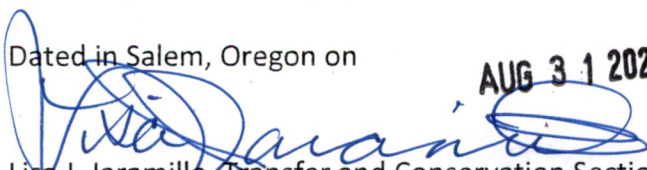
#### **Determination and Proposed Action**

The change in places of use proposed in Transfer Application T-13656 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-13656 is approved, the final order will include the following:*

1. *The change in places of use proposed in Transfer Application T-13656 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 Certificates 34493, 7086, 95525, and any related decree.*
3. *Water right Certificates 34493, 7086, and 95525 are cancelled. New certificates will be issued describing those portions of Certificates 34493, 7086, and 95525 not affected by this transfer.*
4. *The former place of use of the transferred rights shall no longer receive water under the rights.*
5. *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.*
6. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on

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

**AUG 31 2022**

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.*

**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.