



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

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September 22, 2022

VIA CERTIFIED MAIL

PAUL AND SUSAN FOBERT
18899 FOBERT RD NE
HUBBARD, OR 97032

SUBJECT: Water Right Transfer Application T-13384

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13384. 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 Woodburn Independent 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.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. Mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Please do not hesitate to contact me at 503-986-0892 or Joan.M.Smith@wrd.state.or.us if I may be of assistance.

Sincerely,

Joan Smith

Transfer Specialist

Transfer and Conservation Section

cc: Transfer Application T-13384
Gregory J. Wacker, District 16 Watermaster (*via e-mail*)
Doann Hamilton, Agent for the applicant (*via e-mail*)

encs

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

In the Matter of Transfer Application)
T-13384, Marion County)

REVISED

) PRELIMINARY DETERMINATION
) PROPOSING APPROVAL OF AN
) ADDITIONAL POINT OF DIVERSION,
) ADDITIONAL POINTS OF APPROPRIATION
) 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.

Applicant

PAUL AND SUSAN FOBERT
18899 FOBERT RD NE
HUBBARD, OR 97032

Findings of Fact

1. On March 6, 2020, PAUL AND SUSAN FOBERT filed an application to change the places of use under Certificates 29402 and 35499, for an additional point of diversion under Certificate 35499, and additional points of appropriation under Certificates 29402 and 29405. The Department assigned the application number T-13384.
2. Notice of the application for transfer was published on March 10, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 27, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13384 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of August 30, 2021, for the applicants to respond. The applicants 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 and amended the application.

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. On August 27, 2021, the Department received amendments to Transfer Application T-13384 removing Well G from the application.
5. On March 3, 2022, the Department issued the Preliminary Determination proposing approval of Transfer Application T-13384.
6. On March 22, 2022, the Agent for the applicant contacted the Department requesting a re-review of the Transfer application as some of the information was not updated when a well was removed from the application, and scrivener's errors existed in the Preliminary Determination.
7. The portion of the first right to be transferred is as follows:

Certificate: 29402 in the name of RICHARD MOORHOUSE (perfected under Permit G-875)

Use: IRRIGATION of 24.0 ACRES

Priority Date: JUNE 6, 1958

Rate: 0.195 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL a tributary of PUDDING RIVER (Willamette River)

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	1 W	WM	35	NE NE	53	WELL F - 184 FEET SOUTH AND 1550 FEET EAST FROM THE NW CORNER OF DLC 53 AS PROJECTED WITHIN BONNEY DLC 53

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 W	WM	25	SW SW	53	4.2
4 S	1 W	WM	26	SE SE	53	0.8
4 S	1 W	WM	35	NE NE	53	3.2
4 S	1 W	WM	36	NW NW	53	15.8
Total:						24.0

8. Transfer Application T-13384 proposes three additional points of appropriation with approximate distances in feet from the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance in feet from the authorized point of appropriation
4 S	1 W	WM	26	NE SE	WELL A – 20.5 CHAINS SOUTH AND 6.75 CHAINS EAST FROM THE NE CORNER OF DLC 63	2640.0
4 S	1 W	WM	26	SE SE	WELL H – 2825 FEET SOUTH AND 1270 FEET EAST FROM THE NE CORNER OF DLC 63	370.0

9. Transfer Application T-13384 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 W	WM	25	SW SW	53	4.2
4 S	1 W	WM	26	SE SE	53	0.8
4 S	1 W	WM	35	NE NE	53	3.7
4 S	1 W	WM	36	NW NW	53	15.3
Total:						24.0

10. The second right to be transferred is as follows:

Certificate: 29405 in the name of BILL and FRANK FOBERT (perfected under Permit G-1170)

Use: IRRIGATION of 66.7 ACRES

Priority Date: NOVEMBER 13, 1958

Rate: 0.82 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL a tributary of PUDDING RIVER (Molalla River)

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 W	WM	26	NE SE	WELL A - 20.5 CHAINS SOUTH AND 6.75 CHAINS EAST FROM THE NE CORNER OF VENDEWACKER DLC 63, AS PROJECTED WITHIN MINIER DLC 60

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 W	WM	26	SW NE	63	1.2
4 S	1 W	WM	26	NE SE	60	4.4
4 S	1 W	WM	26	NW SE	60	4.0
4 S	1 W	WM	26	NW SE	63	24.0
4 S	1 W	WM	26	SW SE	60	4.5
4 S	1 W	WM	26	SW SE	63	20.6
4 S	1 W	WM	26	SE SE	60	8.0
Total:						66.7

11. Transfer Application T-13384 proposes three additional points of appropriation with approximate distances in feet from the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance in feet from the authorized point of appropriation
4 S	1 W	WM	26	SE SE	WELL H – 2825 FEET SOUTH AND 1270 FEET EAST FROM THE NE CORNER OF DLC 63	205.1
4 S	1 W	WM	35	NE NE	WELL F – 184 FEET SOUTH AND 1550 FEET EAST FROM THE NW CORNER OF DLC 53	164.8

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

Certificate: 35499 in the name of LLOYD H. and JEAN M. PARADIS (perfected under Permit S-28076)

Use: IRRIGATION of 19.4 and SUPPLEMENTAL IRRIGATION of 24.0 ACRES

Priority Date: MAY 22, 1962

Rate: 0.55 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: PUDDING RIVER, tributary of MOLALLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	1 W	WM	36	NE NW	53	POD D - 2070 FEET NORTH AND 2180 FEET EAST FROM THE NE CORNER OF DIMMICK DLC 64, AS PROJECTED WITHIN BONNEY DLC 53

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 W	WM	25	SW SW	53	0.2
4 S	1 W	WM	25	SE SW	53	0.2
4 S	1 W	WM	36	NE NW	53	11.4
4 S	1 W	WM	36	NW NW	53	7.6
Total:						19.4

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 W	WM	25	SW SW	53	4.2
4 S	1 W	WM	26	SE SE	53	0.8
4 S	1 W	WM	35	NE NE	53	3.2
4 S	1 W	WM	36	NW NW	53	15.8
Total:						24.0

13. Transfer Application T-13384 proposes an additional point of diversion approximately 1855.8 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	1 W	WM	36	NW SW	60	POD C - 1595 FEET SOUTH AND 2465 FEET EAST FROM NE CORNER OF DLC 63

14. Transfer Application T-13384 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 W	WM	25	SW SW	53	0.2
4 S	1 W	WM	26	SE SW	53	0.2
4 S	1 W	WM	35	NE NW	53	11.4
4 S	1 W	WM	36	NW NW	53	7.6
Total:						19.4

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 W	WM	25	SW SW	53	4.2
4 S	1 W	WM	26	SE SE	53	0.8
4 S	1 W	WM	35	NE NE	53	3.7
4 S	1 W	WM	36	NW NW	53	15.3
Total:						24.0

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

15. Water has been used within the five-year period prior to submittal of the transfer application 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.

16. A diversion structure and ditch 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-13384.
17. 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-13384.
18. 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.
19. The proposed changes as conditioned would not result in enlargement of the rights, if conditioned as follows: To avoid injury and enlargement of the groundwater rights, any new wells shall be constructed to produce from elevations at or below 55 feet above mean sea level AMSL and be continuously cased and continuously sealed to at least 100 feet below land surface.
20. The proposed changes would not result in injury to other water rights if conditioned as in finding No.15.
21. All other application requirements are met.

Determination and Proposed Action

The additional points of diversion, additional points of appropriation and the change in places of use proposed in Transfer Application T-13384 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.

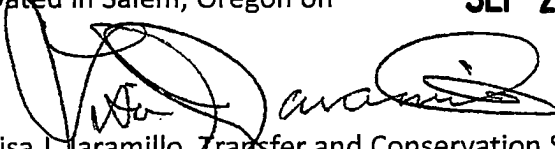
If Transfer Application T-13384 is approved, the final order will include the following:

1. *The additional points of diversion, additional points of appropriation and change in places of use proposed in Transfer Application T-13384 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 29402, 29405, 35499, and any related decree.*
3. *Water right Certificates 29402, 29405, and 35499 are cancelled. New certificates will be issued describing the portions of Certificates 29402 and 35499 not affected by this transfer*

4. *Under Certificate 35499 the quantity of water diverted at the additional point of diversion (POD C), together with that diverted at the original point of diversion (POD D), shall not exceed the quantity of water lawfully available at the original point of diversion (POD D).*
5. *Under Certificate 29402 the quantity of water diverted at the additional points of appropriation (Wells A and H), together with that diverted at the original point of appropriation (Well F), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well D).*
6. *Under Certificates 29405 the quantity of water diverted at the additional points of appropriation (Wells A and H), together with that diverted at the original point of appropriation (Well F), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well F).*
7. *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.*
8. *The former place of use of the transferred rights shall no longer receive water under the rights.*
9. *The new wells shall be constructed to produce from elevations at or below 55 feet AMSL and be continuously cased and continuously sealed to at least 100 feet below land surface.*
10. *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.*
11. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on

SEP 22 2022


Lisa J. Taramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR
Oregon Water Resources Department

SEP 23 2022

This Revised 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.