



Oregon

Kate Brown, Governor

Water Resources Department

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November 21, 2022

VIA CERTIFIED MAIL AND E-MAIL

Applicant

WALLOWA LAKE IRRIGATION DISTRICT

65196 DOBBIN RD

JOSEPH, OR 97846

SUBJECT: Water Right Transfer Application T-13931

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13931. 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 Wallowa County Chieftain 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 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 contact me at scott.a.grew@water.oregon.gov or 503-986-0890 if I may be of assistance.

Sincerely,

Scott Grew

Transfer Specialist

Transfer and Conservation Section

cc: Transfer Application file T-13931
David D. Bates, District 7 Watermaster (*via e-mail*)
Dan Butterfield, Agent for the applicant (*via e-mail*)
Commenters: Fred Steen, et al. (Jim Hite, Jr., John Fregulia, Gay Fregulia, Rawley Bigsby, Tom Birkmaier and Michael Williams) 66998 CROW CREEK ROAD, ENTERPRISE, OR 97828

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13931, Wallowa County	)	PROPOSING APPROVAL OF A CHANGE IN
	)	CHARACTER 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.

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Findings of Fact

1. On February 25, 2022, WALLOWA LAKE IRRIGATION DISTRICT filed an application to change the character of use under Certificate 2949. The Department assigned the application number T-13931.
2. Notice of the application for transfer was published on March 8, 2022, pursuant to OAR 690-380-4000. Comments were filed in response to the notice.
3. Timely comments were submitted to the Department in response to the notice. The issue raised by the comments focused primarily on the concern that water that is currently allocated for agriculture will be allocated for instream water for fish.
4. Not all the issues raised by the commenters are relevant to the criteria for review of a water right transfer as per OAR 690-380-4010 and approval of a transfer application under OAR 690-380-5000. The issue noted in Finding of Fact #3, though important to the residents and water resources of the area, do not directly relate to the transfer review criteria. Rather, the statutory basis for approving a water right transfer application is relatively narrow and confined to the Department finding or determining:
 - a) The water right proposed for transfer is a water use subject to 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.

- b) The portion of the water right proposed for transfer is not cancelled due to forfeiture for non-use pursuant to ORS 540.610;
 - c) The proposed transfer would not result in enlargement of the water right proposed for transfer; and
 - d) The proposed transfer would not result in injury to other water rights.
5. On September 23, 2022, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13931 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 23, 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.

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

Certificate: 2949 in the name of ASSOCIATED DITCH COMPANIES. (confirmed by Wallowa River Decree in Volume 5, at page 144)

Use: STORAGE FOR SUPPLEMENTAL IRRIGATION, DOMESTIC, AND STOCK USE

Priority Date: 1905

Rate: 4500 ACRE-FEET

Source: WALLOWA LAKE, a tributary of the WALLOWA RIVER

7. Certificate 2949 does not describe the point of diversion; however, information is available describing the dam location as:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	45 E	WM	5	NE NW	940 FEET SOUTH AND 1500 FEET EAST FROM THE NW CORNER OF SECTION 5

8. Transfer Application T-13931 proposes to change the character of use to Multipurpose.

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

9. 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.
10. A dam and control gates 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-13931.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

13. All other application requirements are met.

Determination and Proposed Action

The change in character of use proposed in Transfer Application T-13931 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.

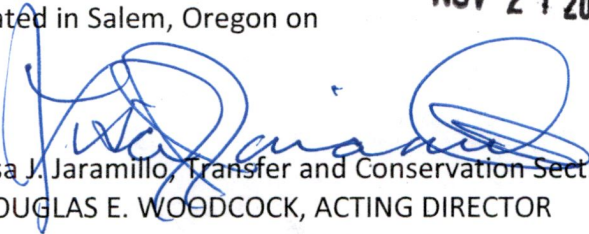
If Transfer Application T-13931 is approved, the final order will include the following:

- 1. The change in character of use proposed in Transfer Application T-13931 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 2949 and any related decree.*
- 3. Water right Certificate 2949 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer*
- 4. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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.*

5. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on

NOV 21 2022


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

This Preliminary Determination was prepared by Scott Grew. If you have questions about the information in this document, you may reach him at scott.a.grew@water.oregon.gov or 503-986-0890.

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.