

Oregon

Tina Kotek, Governor

Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone 503-986-0900

Fax 503 986-0904

www.oregon.gov/owrd

February 3, 2023

VIA CERTIFIED MAIL AND E-MAIL

GEORGE SCHMIDLIN FARMS, LLC
C/O LARRY SCHMIDLIN
43860 NW WOOLEN RD
BANKS, OR 97106

SUBJECT: Water Right Transfer Application T-14040

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-14040. 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 Hillsboro Tribune 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 503-979-3129 or arla.l.davis@water.oregon.gov or if I may be of assistance.

Sincerely,

Arla L Davis

Arla L Davis
Transfer Specialist
Transfer and Conservation Section

cc: T-14040
Jacob W. Constans, District 18 Watermaster (*via e-mail*)
Eric Anthony Urstadt, Agent for the applicant (*via e-mail*)

encs

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-14040, Washington County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF DIVERSION AND
)	CHANGE IN PLACE 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

GEORGE SCHMIDLIN FARMS, LLC
C/O LARRY SCHMIDLIN
43860 NW WOOLEN RD
BANKS, OR 97106

Findings of Fact

1. On June 28, 2022, GEORGE SCHMIDLIN FARMS, LLC filed an application for an additional point of diversion and to change the place of use under Certificate 43721. The Department assigned the application number T-14040.
2. Notice of the application for transfer was published on July 12, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 22, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-14040 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 24, 2022, for the applicant to respond. The applicant(s) 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.
4. The draft Preliminary Determination sent to the applicant on September 22, 2022, contained scrivener's errors in the description of the Authorized Place of Use.

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 the right to be transferred is as follows:

Certificate: 43721 in the name of SCHMIDLIN BROTHERS (perfected under Permit S-35015)
Use: IRRIGATION of 40.0 ACRES
Priority Date: MARCH 19, 1970
Rate: 0.50 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 a diversion of not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.
Source: WEST FORK DAIRY CREEK, a tributary of DAIRY CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	4 W	WM	14	NW SE	700 FEET SOUTH AND 2430 FEET WEST FROM THE E1/4 CORNER OF SECTION 14

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	4 W	WM	14	NE SW	3.9
2 N	4 W	WM	14	NE SE	20.4
2 N	4 W	WM	14	NW SE	15.3
2 N	4 W	WM	14	SE SE	0.4
Total					40.0

6. Transfer Application T-14040 proposes an additional point of diversion approximately 1.03 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	4 W	WM	24	SE NW	POD 2 - 1855 FEET SOUTH AND 1565 FEET EAST FROM THE NW CORNER OF SECTION 24

7. Transfer Application T-14040 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	4 W	WM	24	NW NE	12.2
2 N	4 W	WM	24	SW NE	1.0
2 N	4 W	WM	24	NE NW	26.8
Total					40.0

8. 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)]

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 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-14040.
11. The proposed changes as conditioned would not result in enlargement of the right.
12. The proposed changes would not result in injury to other water rights.
13. All other application requirements are met.

Determination and Proposed Action

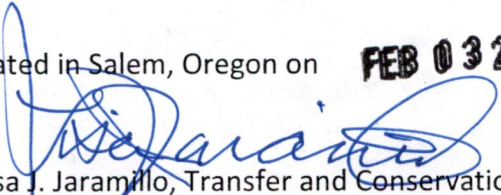
The additional point of diversion and change in place of use proposed in Transfer Application T-14040 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-14040 is approved, the final order will include the following:

1. *The additional point of diversion and change in place of use proposed in Transfer Application T-14040 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 Certificate 43721 and any related decree.*
3. *Water right Certificate 43721 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the new of diversion (POD 2), together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
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.*
 - 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 right shall no longer receive water under the right.*
8. *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 changes and full beneficial use of the water.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on **FEB 03 2023**


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

This Preliminary Determination was prepared by Arla L Davis. If you have questions about the information in this document you may reach me at 503-979-3129 or arla.l.davis@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.