



# Oregon

Tina Kotek, Governor

## Water Resources Department

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February \_\_, 2023

VIA CERTIFIED MAIL AND E-MAIL

### Applicant

METRO, A MUNICIPAL CORPORATION,  
BY GARY SHEPHERD, SENIOR ASST. ATTORNEY,  
OFFICE OF METRO ATTORNEY  
600 NE GRAND AVE  
PORTLAND, OR 97232

SUBJECT: Water Right Transfer Application T-13695

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13695. 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 contact me at [scott.a.grew@water.oregon.gov](mailto: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-13695  
Jacob W. Constans, District 18 Watermaster (*via e-mail*)  
Adam S Zucker, 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-13695, Washington County	)	PROPOSING APPROVAL OF CHANGES IN
	)	POINTS OF DIVERSION AND A 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**

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BY GARY SHEPHERD, SENIOR ASST. ATTORNEY,  
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**Findings of Fact**

1. On April 29, 2021, METRO, A MUNICIPAL CORPORATION, BY GARY SHEPHERD, SENIOR ASST. ATTORNEY, OFFICE OF METRO ATTORNEY, filed an application to change the points of diversion under Certificates 16900, 22091, and 27473 and to change the place of use under Certificate 27473. The Department assigned the application number T-13695.
2. Notice of the application for transfer was published on May 11, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 12, 2022, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13695 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 11, 2023, 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.

4. The first right to be transferred is as follows:

**Certificate:** 16900 in the name of C. B. BUCHANAN JR (perfected under Permit S-16100)

**Use:** IRRIGATION of 36.3 ACRES

**Priority Date:** DECEMBER 15, 1944

**Rate:** 0.454 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:** TUALATIN RIVER, a tributary of WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	4 W	WM	25	NW NE	NOT DESCRIBED IN CERTIFICATE

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	4 W	WM	25	NE NE	16.6
1 S	4 W	WM	25	NW NE	14.2
1 S	4 W	WM	25	SW NE	3.4
1 S	4 W	WM	25	SE NE	2.1
				TOTAL	36.3

5. The Department received information from the applicant that describes the location of the authorized point of diversion for Certificate 42326 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	4 W	WM	25	NW NE	POD #2 - 1720 FEET NORTH FROM THE CENTER OF SECTION 25

6. Transfer Application T-13695 proposes to move the authorized point of diversion approximately 400 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	4 W	WM	25	NW NE	POD #3 - 570 FEET SOUTH AND 120 FEET EAST FROM THE NORTH 1/4 CORNER OF SECTION 25

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

**Certificate:** 22091 in the name of JOHN SUNDQUIST (perfected under Permit S-22432)

**Use:** IRRIGATION of 28.6 ACRES

**Priority Date:** FEBRUARY 18, 1953

**Rate:** 0.36 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:** TUALATIN RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	4 W	WM	25	SW NE	NOT DESCRIBED IN CERTIFICATE

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	3 W	WM	30	NW NW	4.0
1 S	4 W	WM	25	NE NE	9.1
1 S	4 W	WM	25	NW NE	0.3
1 S	4 W	WM	25	SW NE	2.8
1 S	4 W	WM	25	SE NE	12.4
Total					28.6

8. The Department received information from the applicant that describes the location of the authorized point of diversion for Certificate 42326 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	4 W	WM	25	SW NE	POD #1 - 1280 FEET NORTH AND 2500 FEET WEST FROM THE EAST CORNER OF SECTION 25

9. Transfer Application T-13695 proposes to move the authorized point of diversion approximately 800 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	4 W	WM	25	NW NE	POD #3 - 570 FEET SOUTH AND 120 FEET EAST FROM THE NORTH 1/4 CORNER OF SECTION 25

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

**Certificate:** 27473 in the name of JOHN SUNDQUIST (perfected under Permit S-24151)

**Use:** IRRIGATION of 10.0 ACRES

**Priority Date:** APRIL 18, 1956

**Rate:** 0.13 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:** TUALATIN RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	4 W	WM	25	SW NE	NOT DESCRIBED IN CERTIFICATE

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	4 W	WM	25	SW NE	10.0

11. The Department received information from the applicant that describes the location of the authorized point of diversion for Certificate 42326 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	4 W	WM	25	SW NE	POD #1 - 1280 FEET NORTH AND 2500 FEET WEST FROM THE EAST CORNER OF SECTION 25

12. Transfer Application T-13695 proposes to move the authorized point of diversion approximately 800 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	4 W	WM	25	NW NE	POD #3 - 570 FEET SOUTH AND 120 FEET EAST FROM THE NORTH 1/4 CORNER OF SECTION 25

13. Transfer Application T-13695 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	3 W	WM	30	NW NW	0.5
1 S	3 W	WM	30	SW NW	0.1
1 S	4 W	WM	25	NE NE	6.4
1 S	4 W	WM	25	SE NE	3.0
Total					10.0

14. 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)]**

15. 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.

16. 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-13695.
17. The proposed changes would not result in enlargement of the rights.
18. The proposed changes would not result in injury to other water rights.
19. All other application requirements are met.

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

The change in points of diversion and change in place of use proposed in Transfer Application T-13695 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.

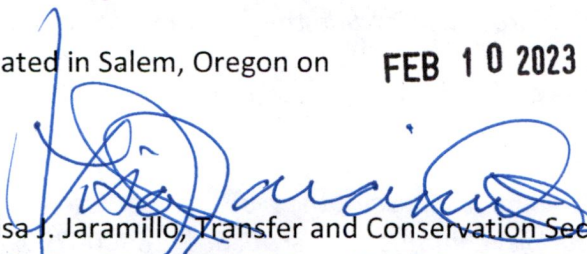
*If Transfer Application T-13695 is approved, the final order will include the following:*

1. *The change in points of diversion and change in place of use proposed in Transfer Application T-13695 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 16900, 22091 and 27473 any related decree.*
3. *Water right Certificates 16900, 22091 and 27473 are cancelled.*
4. *The quantity of water diverted at the new points 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 places of use of the transferred rights 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, new certificates confirming the rights transferred will be issued.

Dated in Salem, Oregon on **FEB 10 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 Scott Grew. If you have questions about the information in this document, you may reach him at [scott.a.grew@water.oregon.gov](mailto: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.