

Oregon

Tina Kotek, Governor

Water Resources Department

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February 28, 2023

VIA CERTIFIED MAIL AND E-MAIL

Applicants

LORIN D. SHERBURN AND
KATHARINE J. SHERBURN
68439 HWY 205
BURNS, OR 97720

Applicants and Receiving Landowners

JACOB DAVIS AND
ELLI DAVIS
37626 SODHOUSE LANE
PRINCETON, OR 97721

SUBJECT: Water Right Transfer Application T-14060

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-14060. 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 Burns Times-Herald 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 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-14060
Dally Swindlehurst, District 10 Watermaster (via e-mail)
John A. Short, 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-14060, Harney County	)	PROPOSING APPROVAL A CHANGE IN
	)	POINT OF APPROPRIATION AND CHANGE
	)	IN PLACE OF USE

Authority

Oregon Revised Statutes (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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 August 1, 2022, LORIN D. SHERBURN, KATHARINE J. SHERBURN, JACOB DAVIS AND ELLI DAVIS filed an application to change the point of appropriation and to change the place of use under Certificate 93979. The Department assigned the application number T-14060.
2. JACOB DAVIS AND ELLI DAVIS are the receiving landowners who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on August 9, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On January 23, 2023, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-14060 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of February 8, 2023, 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.

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.
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5. On January 25, 2023, the agent for the applicant requested the completion date of October 1, 2028 to provide time to hire contractors and develop the new well and irrigation system. The Department granted the longer time for completion per OAR 690-380-5140 (3).

6. The right to be transferred is as follows:

Certificate: 93979 in the name of LORIN D. SHERBURN (perfected under Permit G-16980)

Use: IRRIGATION of 120.0 ACRES

Priority Date: FEBRUARY 9, 2012

Rate: 2.0 CUBIC FEET PER SECOND

Limit/Duty: The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-SIXTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

Period of Use: APRIL 1 THROUGH OCTOBER 31

Source: WELL CF4 IN DONNER UND BLITZEN RIVER BASIN

Authorized Point of Appropriation:

Twtp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	30 E	WM	35	SE NW	WELL CF4 - 3300 FEET NORTH AND 3168 FEET WEST FROM THE SE CORNER OF SECTION 35

Authorized Place of Use:

IRRIGATION					
Twtp	Rng	Mer	Sec	Q-Q	Acres
27 S	30 E	WM	35	SW NW	19.7
27 S	30 E	WM	35	SE NW	20.4
27 S	30 E	WM	35	NE SW	34.9
27 S	30 E	WM	35	NW SW	35.3
27 S	30 E	WM	35	SW SW	4.9
27 S	30 E	WM	35	SE SW	4.8
Total					120.0

7. Transfer Application T-14060 proposes to move the authorized point of appropriation approximately 7.4 miles from the existing point of appropriation to:

Twtp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	31 E	WM	25	SW NE	540 FEET NORTH AND 1350 FEET WEST FROM THE E 1/4 CORNER OF SECTION 25

8. Transfer Application T-14060 also proposes to change the place of use of the right to:

IRRIGATION					
Twtp	Rng	Mer	Sec	Q-Q	Acres
27 S	31 E	WM	25	SW NE	37.6
27 S	31 E	WM	25	SE NE	14.0

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	31 E	WM	25	SE NW	9.6
27 S	31 E	WM	25	NE SW	9.0
27 S	31 E	WM	25	NE SE	13.5
27 S	31 E	WM	25	NW SE	36.3
				Total	120.0

Transfer Review Criteria (OAR 690-380-4010)

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-14060.
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 point of appropriation and change in place of use proposed in Transfer Application T-14060 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

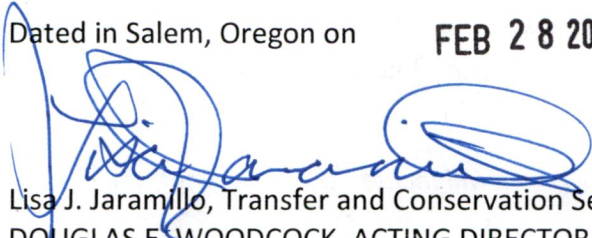
If Transfer Application T-14060 is approved, the final order will include the following:

1. *The change in point of appropriation and change in place of use proposed in Transfer Application T-14060 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 93979 and any related decree.*
3. *Water right Certificate 93979 is cancelled.*
4. *The quantity of water diverted at the new point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*

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 appropriation (new and existing).*
 - 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. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
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, 2028**. 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 28 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 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.