



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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March 8, 2023

VIA CERTIFIED MAIL AND E-MAIL

STEPHANIE DAVIS & GREG JENSEN
PO BOX 625
ST HELENS, OR 97051

SUBJECT: Water Right Transfer Application T-13631

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13631. 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 do not hesitate to contact me at 503-986-0892 or Joan.M.Smith@water.oregon.gov if I may be of assistance.

Sincerely,

Joan Smith

Transfer Specialist

Transfer and Conservation Section

cc: Transfer Application File T-13631
Jacob W. Constans, District 18 Watermaster (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-13631, Columbia County	)	PROPOSING APPROVAL OF A CHANGE IN
	)	POINT OF DIVERSION AND 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

GREG JENSEN AND STEPHANIE DAVIS
PO BOX 625
ST HELENS, OR 97051

Findings of Fact

1. On February 24, 2021, GREG JENSEN AND STEPHANIE DAVIS filed an application to change the point of diversion to change the place of use under Certificate 22695. The Department assigned the application number T-13631.
2. Notice of the application for transfer was published on March 9, 2021, 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-13631 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of October 22, 2022, 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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4. The right to be transferred is as follows:

Certificate: 22695 in the name of CLARENCE R. WAGNER (perfected under Permit S-20329)
Use: DOMESTIC USE 1 FAMILY
Priority Date: MAY 9, 1951
Rate: 0.010 CUBIC FOOT PER SECOND
Source: MILTON CREEK, a tributary of COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	1 W	WM	5	NE NE	Not Described

Authorized Place of Use:

DOMESTIC USE 1 FAMILY						
Twp	Rng	Mer	Sec	Q-Q	GLot	Further Described
4 N	1 W	WM	5	NE NE	11	Hankins Addition to City of St. Helens

5. Certificate 22695 provides a partial description of the point of diversion; the applicant has provided additional information describing the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
4 N	1 W	WM	5	NE NE	11	45.86229 Latitude, -122.82929 Longitude

6. Transfer Application T-13631 proposes to move the authorized point of diversion less than 50.0 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
4 N	1 W	WM	5	NE NE	11	45.86227 Latitude, -122.82936 Longitude

7. Transfer Application T-13631 also proposes to change the place of use of the right to:

DOMESTIC USE 1 FAMILY					
Twp	Rng	Mer	Sec	Q-Q	GLot
4 N	1 W	WM	5	NE SE	11

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 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 right is subject to forfeiture under ORS 540.610.
10. The proposed changes would not result in enlargement of the right.
11. The proposed changes would not result in injury to other water rights.
12. All other application requirements are met.

Determination and Proposed Action

The change in point of diversion and change in place of use proposed in Transfer Application T-13631 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.

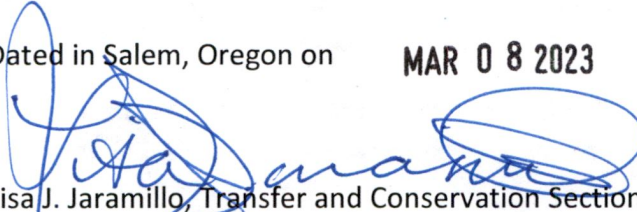
If Transfer Application T-13631 is approved, the final order will include the following:

1. *The change in point of diversion and change in place of use proposed in Transfer Application T-13631 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 22695 and any related decree.*
3. *Water right Certificate 22695 is cancelled.*
4. *The quantity of water diverted at the new point of diversion (POD 1), 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

MAR 08 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 Joan Smith. If you have questions about the information in this document, you may reach me at 503-986-0892 or Joan.M.Smith@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.