



Oregon

Tina Kotek, Governor

Water Resources Department

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March 16, 2023

VIA CERTIFIED MAIL AND E-MAIL

Applicant

ROBERT KIM REED AND KAREN R. REED

50900 MASTEN RD

LA PINE, OR 97739

SUBJECT: Water Right Transfer Application T-13724

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13724. 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 Bulletin 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 may be of assistance.

Sincerely,

Scott Grew

Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-13724
Jeremy T. Giffin, District 11 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-13724, Klamath County)	PROPOSING APPROVAL OF CHANGES 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.

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Findings of Fact

1. On May 24, 2021, ROBERT KIM REED AND KAREN R. REED filed an application for a change in point of diversion and a change in place of use under Certificate 95245. The Department assigned the application number T-13724.
2. Notice of the application for transfer was published on June 8, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 15, 2021, the Agent for the Applicant, John Short, submitted a revised map and an application page revising the location of the proposed point of diversion.
4. Linda H. Bealmear and Glenn L. Rollins II are the deeded landowners consenting to the changes of point of diversion and place of use of 4.0 acres.
5. On December 13, 2022, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13724 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 12, 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.

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.

6. On January 3, 2023, the agent for the applicant requested the completion date of October 1, 2028 is to provide ample time for consultation with ODFW and fish screen installation, along with construction of the new diversion, piping, and irrigation system. The Department granted the longer time for completion per OAR 690-380-5140 (3).

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

Certificate: 95245 in the name of H P. HOEY (confirmed by Deschutes River Decree, Volume 9, at Page 362)
Use: IRRIGATION of 4.0 ACRES
Priority Date: SEPTEMBER 1, 1898
Rate: 0.10 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water to which this right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purpose and shall not exceed 4.0 acre-feet per acre, measured at the point of diversion from the stream, which may be diverted at a rate not to exceed ONE-FORTIETH of one cubic foot per second per acre from May 23 to August 20 and ONE-EIGHTIETH of one cubic foot per second per acre from April 1 to May 23 and August 20 to November 1.
Source: BIG MARSH CREEK, a tributary to CRESCENT CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Measured Distances
24 S	7 E	WM	20	NONE GIVEN

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	7 E	WM	20	SW NE	4.0

8. Certificate 95245 does not describe the point of diversion; however, the applicant provided a description of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	7 E	WM	20	SW SW	975 FEET NORTH AND 260 FEET EAST FROM THE SW CORNER OF SECTION 20

9. Transfer Application T-13724 proposes to move the authorized point of diversion approximately 20.3 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	9 E	WM	25	NW NE	850 FEET SOUTH AND 820 FEET EAST FROM THE N1/4 CORNER OF SECTION 25

10. Transfer Application T-13724 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
22 S	9 E	WM	25	NW NE	4.0

11. 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)]

12. 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.
13. A pumps, canals, pipelines, 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-13724.
14. The proposed changes would not result in enlargement of the right.
15. The proposed changes would not result in injury to other water rights.
16. 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-13724 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved, and the abandoned right will be cancelled.

If Transfer Application T-13724 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-13724 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 95245 and any related decree.*
3. *Water right Certificate 95245 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 point of diversion, 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 new 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, 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

MAR 16 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.**