



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

March 28 2023

VIA CERTIFIED MAIL AND E-MAIL

Applicant

CLEAVER LAND, LLC
C/O ALAN CLEAVER
PO BOX 1191
HERMISTON, OR 97838

SUBJECT: Water Right Transfer Application T-14099

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-14099. 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 East Oregonian 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-14099
Gregory M. Silbernagel, District 5 Watermaster *(via e-mail)*
Lindsay Thane, Attorney/Schwabe, Williamson & Wyatt, Co-Agent for the applicant *(via e-mail)*
Peter D. Mohr, Attorney/MohrWater Legal PC, Co-Agent for the applicant *(via e-mail)*
Bob Long, CWRE/CwM-H2O, LLC, Co-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-14099, Umatilla County)	PROPOSING APPROVAL OF A CHANGE IN
)	POINT OF DIVERSION, A CHANGE IN
)	PLACE OF USE, AND A CHANGE THE
)	CHARACTER 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 September 30, 2022, CLEAVER LAND, LLC, C/O ALAN CLEAVER filed an application to change the point of diversion, change the place of use and to change the character of use under Certificate 53653. The Department assigned the application number T-14099.
2. Notice of the application for transfer was published on October 11, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 25, 2022, the Department sent an e-mail request to the agent to clarify the proposed lands and inquire about a receiving landowner.
4. On November 1, 2022, the agent for the submitted a revised Table 2 to redescribe the proposed lands.

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 20, 2023, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-14099 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 19, 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.
6. The portion of the right to be transferred is as follows:

Certificate: 53653 in the name of L AND L FARMS (perfected under Permit S-42856)
Use: IRRIGATION of 76.3 ACRES
Priority Date: JANUARY 11, 1978
Rate: 1.68 CUBIC FEET 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-FORTIETH 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 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: COLUMBIA RIVER, JOHN DAY POOL, a tributary of PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	28 E	WM	17	NW SW	1850 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 17

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	28 E	WM	29	NE SW	11.1
5 N	28 E	WM	29	NW SE	33.6
5 N	28 E	WM	29	SW SE	31.6
Total					76.3

7. Transfer Application T-14099 proposes a change in point of diversion approximately 2.1 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	27 E	WM	13	NW SW	2270 FEET NORTH AND 940 FEET EAST FROM THE SW CORNER OF SECTION 13

8. Transfer Application T-14099 also proposes to change the place of use of the right to:

MUNICIPAL USE
WITHIN THE CITY OF UMATILLA WATER SERVICE AREA

9. Transfer Application T-14099 proposes to change the character of use to MUNICIPAL USE.

10. Certificate 53653 does not specify the irrigation season. However, consistent with the UMATILLA RIVER decree, the irrigation season is established as being May 1 through September 30.
11. The applicant does not meet the definition of a municipality ORS 540.510(3)(b). The transferred right will be lost if not assigned to and perfected by a municipality.
12. 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)]

13. 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.
14. 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-14099.
15. The proposed changes would not result in enlargement of the right, if conditioned so that the rate of diversion for the proposed municipal uses shall be limited to 1.68 cubic feet per second and shall be further limited to a total volume diverted of 343.35 acre-feet (76.3 acres x 4.5 acre-feet per acre) during the time period of May 1 through September 30.
16. The proposed changes would not result in injury to other water rights.
17. All other application requirements are met.

Determination and Proposed Action

The change in point of diversion, change in place of use and change in character of use proposed in Transfer Application T-14099 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.

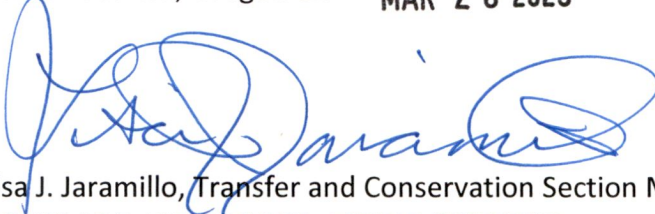
If Transfer Application T-14099 is approved, the final order will include the following:

1. *The change in point of diversion, change in place of use and change in character of use proposed in Transfer Application T-14099 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 53653 and any related decree.*
3. *Water right Certificate 53653 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 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 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.**