

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13904, Wasco County)	PROPOSING APPROVAL OF A CHANGE IN
)	POINTS OF APPROPRIATION, A CHANGE
)	IN PLACES OF USE AND CHANGES IN
)	CHARACTER 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.

Applicant

DESIGN, LLC
1600 AMPHITHEATRE PARKWAY
MOUNTAIN VIEW, CA 94043

Receiving Landowner

CITY OF THE DALLES
DEPARTMENT OF PUBLIC WORKS
1215 WEST FIRST STREET
THE DALLES, OR 97058

Findings of Fact

1. On January 31, 2022, DESIGN, LLC, filed an application to change the points of appropriation, change the places of use and change the character of use under Certificates 46835, 46836, 46839 and 82480. The Department assigned the application number T-13904.
2. Notice of the application for transfer was published on February 8, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 8, 2010, the Department received a notice for a specific to general industrial use change under Certificate 82480 (original Certificate 46837, confirming Certificate 82480 was issued as a result of the approval of T-5607) per ORS 540.520(9).
4. On July 26, 2010, the Department recognized the change in use of the rights from specific to general industrial and added Tax Lot 1100, T2N, R13E, Section 28, WM, as requested by the applicant and described in the place of use description in FOF No. 22.

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 the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, of this preliminary determination.

5. On February 3, 2021, DESIGN, LLC, also filed Transfer Application T-13596, which proposes changes to the remaining portion of Certificate 82480. Transfer Application T-13904 and Transfer Application T-13596, will be issued concurrently. No remaining right will be issued for Certificate 82480.
6. On January 31, 2022, the applicant requested a completion date of October 1, 2044, to conduct planning, develop engineering plans, and for construction of the necessary infrastructure. The Department granted this completion date pursuant to OAR 690-380-5140.
7. On February 2, 2023, The Department contacted the agent for the applicant by email requesting clarification of the changes proposed by Transfer Application T-13904.
8. On February 2, 2023, the agent for the applicant provided clarification of the changes requested by Transfer Application T-13904.
9. On September 27, 2023, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13904 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 27, 2023, for the applicant to respond. The applicant(s) 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.
10. The first right to be transferred is as follows:

Certificate: 46835 in the name of MARTIN MARIETTA ALUMINUM INC. (perfected under Permit G-338)
Use: INDUSTRIAL
Priority Date: SEPTEMBER 7, 1956
Rate: 2.9 CUBIC FEET PER SECOND
Source: WELL No. 1, a tributary of COLUMBIA RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 N	13 E	WM	28	NW SW	39	WELL NO. 1 - 1320 FEET NORTH AND 2260 FEET WEST FROM THE S1/4 CORNER OF SECTION 28

Authorized Place of Use:

INDUSTRIAL				
Twp	Rng	Mer	Sec	Q-Q
2 N	13 E	WM	28	NE SW
2 N	13 E	WM	28	NW SW
2 N	13 E	WM	28	SW SW
2 N	13 E	WM	28	SE SW

11. Transfer Application T-13904 proposes to move the authorized point of appropriation, with approximate distances from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance From Authorized Well
2 N	13 E	WM	33	NE NW	RIVERSIDE WELL 2 - 340 FEET SOUTH AND 1360 FEET EAST FROM THE NW CORNER OF SECTION 33	WELL NO. 1 - 0.37 mi
2 N	13 E	WM	33	NW NW	RIVERSIDE WELL 1 - 620 FEET SOUTH AND 905 FEET EAST FROM THE NW CORNER OF SECTION 33	WELL NO. 1 - 0.38 mi

12. Transfer Application T-13904 also proposes to change the place of use of the right to:

MUNICIPAL USE
City of The Dalles Service Area

13. Transfer Application T-13904 proposes to change the character of use to municipal use.

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

Certificate: 46836 in the name of MARTIN MARIETTA ALUMINUM INC. (perfected under Permit G-645)

Use: INDUSTRIAL

Priority Date: AUGUST 19, 1957

Rate: 1.11 CUBIC FEET PER SECOND

Source: WELL NO. 1, a tributary of COLUMBIA RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 N	13 E	WM	28	NW SW	39	WELL NO. 1 - 1320 FEET NORTH AND 2260 FEET WEST FROM THE S1/4 CORNER OF SECTION 28

Authorized Place of Use:

INDUSTRIAL				
Twp	Rng	Mer	Sec	Q-Q
2 N	13 E	WM	28	NE SW
2 N	13 E	WM	28	NW SW
2 N	13 E	WM	28	SW SW
2 N	13 E	WM	28	SE SW

15. Transfer Application T-13904 proposes to move the authorized point of appropriation, with approximate distances from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance From Authorized Well
2 N	13 E	WM	33	NE NW	RIVERSIDE WELL 2 - 340 FEET SOUTH AND 1360 FEET EAST FROM THE NW CORNER OF SECTION 33	WELL NO. 1 - 0.37 mi

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance From Authorized Well
2 N	13 E	WM	33	NW NW	RIVERSIDE WELL 1 - 620 FEET SOUTH AND 905 FEET EAST FROM THE NW CORNER OF SECTION 33	WELL NO. 1 - 0.38 mi

16. Transfer Application T-13904 also proposes to change the place of use of the right to:

MUNICIPAL USE
City of The Dalles Service Area

17. Transfer Application T-13904 proposes to change the character of use to municipal use.

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

Certificate: 46839 in the name of MARTIN MARIETTA ALUMINUM INC. (perfected under Permit G-648)

Use: INDUSTRIAL

Priority Date: AUGUST 19, 1957

Rate: 1.6 CUBIC FEET PER SECOND

Source: WELL NO. 4-A, a tributary of COLUMBIA RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 N	13 E	WM	28	SE SW	39	WELL NO. 4-A -970 FEET NORTH AND 1080 FEET WEST FROM THE S1/4 CORNER OF SECTION 28

Authorized Place of Use:

INDUSTRIAL				
Twp	Rng	Mer	Sec	Q-Q
2 N	13 E	WM	28	NE SW
2 N	13 E	WM	28	NW SW
2 N	13 E	WM	28	SW SW
2 N	13 E	WM	28	SE SW

19. Transfer Application T-13904 proposes to move the authorized point of appropriation, with approximate distances from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance From Authorized Well
2 N	13 E	WM	33	NE NW	RIVERSIDE WELL 2 - 340 FEET SOUTH AND 1360 FEET EAST FROM THE NW CORNER OF SECTION 33	WELL NO. 4-A - 0.24 mi
2 N	13 E	WM	33	NW NW	RIVERSIDE WELL 1 - 620 FEET SOUTH AND 905 FEET EAST FROM THE NW CORNER OF SECTION 33	WELL NO. 4-A 0.32 mi

20. Transfer Application T-13904 also proposes to change the place of use of the right to:

MUNICIPAL USE
City of The Dalles Service Area

21. Transfer Application T-13904 proposes to change the character of use to municipal use.

22. The fourth right to be transferred is as follows:

Certificate: 82480 in the name of MARTIN MARIETTA CORP (perfected under Permit G-646)

Use: INDUSTRIAL USE

Priority Date: AUGUST 19, 1957

Rate: 0.4 CUBIC FOOT PER SECOND

Limit/Duty: The quantity of water appropriated at the new wells shall not exceed the quantity of water available at the old well under the subject right and shall not exceed 1.2 cubic foot per second.

Source: WELL 3 and WELL 4 in the COLUMBIA RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 N	13 E	WM	28	SW SW	41	WELL 3 - 300 FEET SOUTH AND 1820 FEET WEST FROM THE SE CORNER OF DLC 39
2 N	13 E	WM	28	SE SW	39	WELL 4 - 60 FEET NORTH AND 1040 FEET WEST FROM THE SE CORNER OF DLC 39

Authorized Place of Use:

INDUSTRIAL USE					
Twp	Rng	Mer	Sec	Tax Lot	Q-Q
2 N	13 E	WM	28	700, 705, 1000	NE SW
2 N	13 E	WM	28	700	NW SW
2 N	13 E	WM	28	700	SW SW
2 N	13 E	WM	28	700	SE SW
2 N	13 E	WM	28	1100	SW SW
2 N	13 E	WM	28	1100	SE SW
2 N	13 E	WM	33	1100	NE NW
2 N	13 E	WM	33	1100	NW NW

23. Transfer Application T-13904 proposes to move the authorized points of appropriation with approximate distances from the existing points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance From Authorized Wells
2 N	13 E	WM	33	NE NW	RIVERSIDE WELL 2 - 340 FEET SOUTH AND 1360 FEET EAST FROM THE NW CORNER OF SECTION 33	WELL 3 - 0.25 mi WELL 4 - 0.32 mi
2 N	13 E	WM	33	NW NW	RIVERSIDE WELL 1 - 620 FEET SOUTH AND 905 FEET EAST FROM THE NW CORNER OF SECTION 33	WELL 3 - 0.2 mi WELL 4 - 0.23 mi

24. Transfer Application T-13904 also proposes to change the place of use of the right to:

MUNICIPAL USE
City of The Dalles Service Area

25. Transfer Application T-13904 proposes to change the character of use to municipal use.

26. The applicant does not meet the definition of a municipality under ORS 540.510(3)(b). The transferred rights will be lost if not assigned to and perfected by a municipality.

27. Additional monitoring is required to ensure approval of the transfer will not adversely impact the groundwater resource. Certificates 46838 and 82480, are both located in a Critical Groundwater Area. Installation of totalizing flow meters are required, as well as monthly reporting on or near the 1st of each month of flow meter readings and water levels in the wells. Measuring tubes are also required. The water user shall allow the Watermaster access to measure the water level and read the flow meter on a monthly basis. The Watermaster shall request access upon reasonable notice.

Transfer Review Criteria [OAR 690-380-4000(14), 690-380-4010(2) and OAR 690-380-2110(2)]

28. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

29. A water delivery system sufficient to use the full amount of water allowed under the existing rights was present within the five-year period prior to submittal of Transfer Application T-13904.

30. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).

31. The proposed points of appropriation develop groundwater from the same aquifer as the authorized points of appropriation, as required by OAR 690-380-2110(2).

32. The proposed changes, as conditioned, would not result in enlargement of the rights.

33. The proposed changes, as conditioned, would not result in injury to other existing water rights.

34. All other application requirements are met.

Determination and Proposed Action

The changes in points of appropriation, changes in places of use and changes in character of use proposed in Transfer Application T-13904 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-13904 is approved, the final order will include the following:

- 1. The changes in points of appropriation, changes in places of use and changes in character of use proposed in Transfer Application T-13904 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 46835, 46836, 46839, and 82480 and any related decree.*
- 3. Water Right Certificates 46835, 46836, 46839, and 82480 are cancelled.*
- 4. A remaining portion of Certificate 82480 not proposed for transfer under Transfer Application T-13904, is proposed for transfer under Transfer Application T-13596. Because Transfer Application T-13904 and Transfer Application T-13596 will be issued concurrently, no Remaining Right Certificate will be issued for the remaining portion of Certificate 82480.*
- 5. Under Certificate 46835, the quantity of water diverted at the new points of appropriation (RIVERSIDE WELL 1 and RIVERSIDE WELL 2) shall not exceed the quantity of water lawfully available at the original point of appropriation (WELL NO. 1).*
- 6. Under Certificate 46836, the quantity of water diverted at the new point of appropriation (RIVERSIDE WELL 1 and RIVERSIDE WELL 2) shall not exceed the quantity of water lawfully available at the original point of appropriation (WELL NO. 1).*
- 7. Under Certificate 46839, the quantity of water diverted at the new points of appropriation (RIVERSIDE WELL 1 and RIVERSIDE WELL 2) shall not exceed the quantity of water lawfully available at the original point of appropriation (WELL NO. 4-A).*
- 8. Under Certificate 82480, the quantity of water diverted at the new points of appropriation (RIVERSIDE WELL 1 and RIVERSIDE WELL 2) shall not exceed the quantity of water lawfully available at the original points of appropriation (WELL 3 and WELL 4).*
- 9. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
- 10. 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.*
 - d. The water user shall install and maintain a dedicated measuring tube for the purpose of collecting water level measurements from the well.*

- e. *The water user shall allow the Watermaster access to measure the water level and read the flow meter on a monthly basis. The Watermaster shall request access upon reasonable notice.*
11. *The former places of use of the transferred rights shall no longer receive water under the rights.*
12. *Additional monitoring is required to ensure approval of the transfer will not adversely impact the groundwater resource. Certificates 46838 and 82480, are both located in a Critical Groundwater Area. Installation of totalizing flow meters are required as well as monthly reporting on or near the 1st of each month of flow meter readings and water levels in the wells. Measuring tubes are also required. The water user shall allow the Watermaster access to measure the water level and read the flow meter on a monthly basis. The Watermaster shall request access upon reasonable notice.*
13. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2044**. 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.*
14. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on **JAN 26 2024**


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Arla L Davis. If you have any questions about the information in this document, you may reach me at 503-979-3129 or arla.l.davis@water.oregon.gov

Protests

Under the provisions of ORS 540.520(6) & (7) and OAR 690-380-4030, within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, any person may file, jointly or severally, a protest expressing opposition of approval of the transfer application and disagreement with this Preliminary Determination or a standing statement in support of this Preliminary Determination. If this Preliminary Determination determines that a change in point of diversion or appropriation would result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050. Protests and standing statements must be received by the Water Resources Department within 30 days after the last

date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later.

Protests must be in writing and received in hard copy form with the appropriate statutory protest filing fee; protests cannot be filed by electronic mail. [OAR 690-002-0025(3) and 690-380-0100(9)]. The protest must include the following:

- The person's name, address, and telephone number;
- All reasonably ascertainable issues and all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue may preclude consideration of the issue during the hearing;
- If you are the applicant, a protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$950 required by ORS 536.050 and proof of service of the protest upon the applicant.

Requests for Standing

Under the provisions of OAR 690-380-4030(5), the Department shall provide to persons who have filed standing statements as defined under OAR 690-380-0100(11) notice of any differences between the Department's Preliminary Determination and the Final Order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

Requests for standing must be received in the Water Resources Department no later than 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the preliminary determination as issued.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been filed under OAR 690-380-4030. In accordance with OAR 690-380-4200, notice and conduct of the hearing shall:

- Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties stipulate otherwise; and
- If a protest has asserted that a water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

If after hearing the Department issues a proposed Final Order finding that a change in point of diversion or appropriation will result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050 within 15 days of receipt of the proposed order. Notwithstanding 690-002-0175, if the applicant files a notification of intent to pursue approval of the transfer under 690-380-5030 to 690-380-5050, the deadline for filing exceptions to the proposed order shall be 30 days after the Department provides notice to the parties that the transfer does not meet the requirements of 690-380-5030 to 690-380-5050.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear, or fail to appear at a scheduled hearing, the Director may issue a final order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions, or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 690-137-0555, an agency representative may represent partnerships, corporations, associations, governmental subdivisions or public, or private organizations if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

If you have questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.

Address any correspondence to: Oregon Water Resources Department, Transfer and Conservation Section, 725 Summer Street NE, Suite A, Salem OR 97301-1266.



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

January 26, 2024

VIA CERTIFIED MAIL AND E-MAIL

Applicant

DESIGN LLC
1600 AMPHITHEATRE PARKWAY
MOUNTAIN VIEW, CA 94043

SUBJECT: Water Right Transfer Application T-13904

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13904. 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 Dalles Chronicle 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 don't hesitate to contact me at 503-979-3129 or arla.l.davis@water.oregon.gov, if I may be of assistance

Sincerely,

Arla L Davis

Arla L Davis
Transfer Specialist
Transfer and Conservation Section

cc: T-13904
Robert L. Wood, District 3 Watermaster (via e-mail)
Kim Grigsby, Agent for the applicant (via e-mail)

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