

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-14018, Linn County)	PROPOSING APPROVAL OF A CHANGE IN
)	POINT OF APPROPRIATION, A CHANGE IN
)	PLACE OF USE, AND CANCELLATION OF A
)	WATER RIGHT

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and request voluntary cancellation.

Applicant

FARMTOGETHER SHUMAKER LLC
16192 COASTAL HIGHWAY
LEWES, DE 19958

Findings of Fact

1. On May 26, 2022, FarmTogether Shumaker LLC filed an application to change the point of appropriation and to change the place of use under Certificate 28702 and for a diminution of Certificate 40569 from irrigation to supplemental irrigation. The Department assigned the application number T-14018.
2. Notice of the application for transfer was published on June 14, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 24, 2023, at the request of the applicant, the Department shared the Groundwater Review that was completed January 3, 2023.

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.

4. On March 8, 2023, the Department received questions from the applicant to resolve the issues raised in the groundwater review, which were shared with the Department's Groundwater Section on March 9, 2023:
 - Is there a radius that could be proposed outside of the zone of interference with Crabtree Creek;
 - Is there a rate reduction that could be requested to avoid interference?
5. On April 7, 2023, the Department provided feedback to the applicant and indicated that to expedite the process, they could hire a consulting hydrogeologist to perform analysis of the proposed points of appropriation and the interference with Crabtree Creek. The consultant would need to draft a work plan which could be reviewed by the Department's Groundwater section.
6. On May 24, 2023, the applicant's agent informed the Department that the applicant was hiring a consultant hydrogeologist to perform a study, and that they were developing a plan for review by the Department.
7. On September 15, 2023, the Department was informed that a response on proceeding with the study or not was expected. Due to the property owners being out of state, the response was moving slower than expected.
8. On December 11, 2023, the Department notified the applicant's agent, that the Department will move forward with a draft Preliminary Determination proposing to deny T-14018 for potential surface interference with another water source, if a resolution was not received by January 12, 2024.
9. As of January 29, 2024, a resolution from the applicant has not been received.
10. On January 29, 2024, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-14018 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 29, 2024, for the applicant to respond. The applicant responded by asking if cancellation of Certificate 40569, being the "TO" lands, and reducing the acres/rate being transferred under Certificate 28702 to equal Certificate 40569, could be an option to proceed with an approval of T-14018.
11. On February 26, 2024, the Department contacted the District 16 Watermaster, inquiring if regulation has occurred on Certificate 40569, and if reducing the acres/rate for Certificate 28702 to equal the amount authorized under Certificate 40569, along with the cancellation of Certificate 40569 would be of any value and create a net benefit.
12. On February 27, 2024, the Department extended the time for a response from the applicant to March 29, 2024, as a response from the Watermaster was anticipated.

13. On March 4, 2024, the Watermaster indicated regulation under Certificate 40569 has not occurred, and that the rate reduction and cancellation as proposed would be of equal value or potentially create a net benefit.
14. On March 25, 2024, the Department received a revised Table 2 and map for Certificate 20872. The Department also received an Affidavit for the Voluntary Cancellation of a Water Right Certificate from Dale Arthur. 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.
15. The portion of the right to be transferred is as follows:

Certificate: 28702 in the name of SAM & OPAL LOONEY (perfected under Permit G-538)
Use: IRRIGATION of 23.3 ACRES
Priority Date: APRIL 26, 1957
Rate: 0.29 CUBIC FOOT 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-EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: LOONEY WELL #1, a tributary of SANTIAM RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
11 S	2 W	WM	3	NW NW	77	LOONEY WELL #1 - 920 FEET SOUTH AND 90 FEET EAST FROM THE NW CORNER OF SECTION 3

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
11 S	2 W	WM	3	NE NW	77	5.1
11 S	2 W	WM	3	NW NW	77	18.2
Total						23.3

16. Transfer Application T-14018 proposes to change the authorized point of appropriation from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approximate distance from original point of appropriation in miles (mi.)
10 S	2 W	WM	34	SW SE	60	WELL 1 - 820 FEET NORTH AND 2545 FEET WEST FROM THE SE CORNER OF SECTION 34	0.56 mi.
10 S	2 W	WM	34	SW SE	60	WELL 2 - 1020 FEET NORTH AND 2465 FEET WEST FROM THE SE CORNER OF SECTION 34	0.59 mi.

17. Transfer Application T-14018 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
10 S	2 W	WM	34	SW SE	60	15.5
10 S	2 W	WM	34	SE SE	60	7.8
Total						23.3

Transfer Review Criteria [OAR 690-380-0100(14), 690-380-4010(2), OAR 690-380-2110(2), and 690-380-2200]

18. Water has been used within the last five years prior to the submittal of Transfer Application T-14018 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.
19. 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-14018.
20. The water right is subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
21. The proposed points of appropriation develop groundwater from the same aquifer as the authorized point of appropriation, as required by OAR 690-380-2110(2).
22. The proposed changes, as conditioned, would not result in enlargement of the right.
23. The proposed changes, as conditioned, would not result in injury to other existing water rights.
24. All other application requirements are met.

Cancellation of a Water Right

25. On March 25, 2024, an affidavit certifying that an entire water right has been abandoned was received from Dale Arthur, Senior Farm Manager for FarmTogether Shumaker LLC. The right to be cancelled is as follows:

Certificate: 40569 in the name of LYNN E. & ORVILLIS F. SHUMAKER (perfected under Permit S-35352)
Use: IRRIGATION of 23.3 ACRES
Priority Date: JULY 10, 1970
Rate: 0.29 CUBIC FOOT 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-EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: CRABTREE CREEK, a tributary of SOUTH SANTIAM RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
10 S	2 W	WM	34	SE SE	60	3310 FEET SOUTH AND 2040 FEET WEST FROM THE NW CORNER OF HOWELL DLC 60

Authorized Place of Use to be Cancelled:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
10 S	2 W	WM	34	SW SE	60	15.5
10 S	2 W	WM	34	SE SE	60	7.8
Total						23.3

Determination and Proposed Action

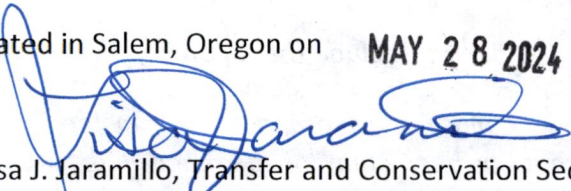
The change in point of appropriation and change in place of use proposed in Transfer Application T-14018 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right will be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved, and the abandoned right will be cancelled.

If Transfer Application T-14018 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-14018 are approved. The right that has been abandoned is cancelled.*

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 28702 and any related decree.*
3. *Approval of this transfer application does not constitute nor grant legal access onto or through another person's property for purposes of accessing the new points of appropriation and the new place of use.*
4. *Water right Certificates 28702 and 40569 are cancelled. A new certificate will be issued describing that portion of Certificate 28702 not affected by this transfer and cancellation.*
5. *The quantity of water diverted at the new points of appropriation (Well 1 and Well 2), shall not exceed the quantity of water lawfully available at the original point of appropriation (Looney Well #1).*
6. *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.*
7. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
8. *The former place of use of the transferred right shall no longer receive water under the right.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2025**. 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.*
10. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on **MAY 28 2024**


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

This Preliminary Determination was prepared Corey Courchane. If you have questions about the information in this document, you may reach me at 503-979-3917 or corey.a.courchane@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.

Notice Regarding Servicemembers: Active-duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Will Davidson at 503-507-2749.

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

May 28, 2024

VIA CERTIFIED MAIL AND E-MAIL

Applicant

FARMTOGETHER SHUMAKER LLC

16192 COASTAL HIGHWAY

LEWES, DE 19958

SUBJECT: Water Right Transfer Application T-14018

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-14018. 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.

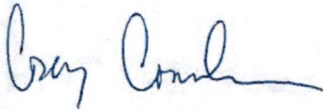
A public notice is being published in the Department's weekly publication and in the Albany Democrat-Herald newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department 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 do not hesitate to contact me, at corey.a.courchane@water.oregon.gov or (503) 979-3917, if I may be of assistance.

Sincerely,

A handwritten signature in blue ink that reads "Corey Courchane". The signature is fluid and cursive, with the first name "Corey" and last name "Courchane" clearly distinguishable.

Corey Courchane
Allocation of Conserved Water
Transfer and Conservation Section

cc: Transfer Application file T-14018
Gregory J. Wacker, District 16 Watermaster (*via e-mail*)
William E. McGill, Agent for the applicant (*via e-mail*)

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