

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

In the Matter of Transfer Application)
T-13996, Grant County)
)
)
)

PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF CHANGES IN
POINTS OF DIVERSION AND ADDITIONAL
POINTS OF DIVERSION

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.

Applicants

TODD N. AND MISTY D. MCKINLEY
59862 HWY. 26
JOHN DAY, OR 97845

THOMAS WRIGHT
PO BOX 201
CANYON CITY, OR 97820

ROBERT W. GRIFFITH AND
BECKY JO (DENT) GRIFFITH
PO BOX 585
MT. VERNON, OR 97865

WADE E. WADDEL
27392 BRAGGA WAY
JOHN DAY, OR 97845

KIRK AND JOANN HUMPHREY
PO BOX 354
MT. VERNON, OR 97865

JAMES AND MARY T. WEAVER
PO BOX 572
JOHN DAY, OR 97845

Findings of Fact

1. On April 27, 2022, TODD N. AND MISTY D. MCKINLEY, ROBERT W. GRIFFITH AND BECKY JO (DENT) GRIFFITH, KIRK AND JOANN HUMPHREY, THOMAS WRIGHT, WADE E. WADDEL, AND JAMES AND MARY T. WEAVER filed an application to change the points of diversion under Certificates 25079, 27792, and 52029 and add additional points of diversion under Certificate 52029. The Department assigned the application number T-13996.
2. Notice of the application for transfer was published on May 10, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

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.

3. On January 6 2023, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13996 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of February 5, 2023, 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 applicants are authorized to pursue the transfer.
4. On February 15, 2023, the applicants submitted superseding point of diversion tables and superseding maps.
5. On March 19, 2024, the applicants submitted superseding maps.
6. On March 20, 2024, the applicants submitted a superseding table 2 and superseding maps.
7. On May 3, 2024, a final order was issued approving a Change in Point of Diversion to reflect Historic Use under Transfer T-13684 cancelling Certificate 52029 as evidenced in Special Order Volume 131 Pages 25-28. A remaining right certificate was issued to describe that portion not affected by Transfer Application T-13684, that certificate number is 97090.
8. On June 13, 2024, the applicants submitted a superseding table 2 and superseding maps.
9. The first right to be transferred is as follows:

Certificate: 25079 in the name of A.L. DELORE (confirmed by John Day River Decree (F))
Use: IRRIGATION of 3.0 ACRES
Priority Date: 1895
Rate: 0.075 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/40 cubic foot per second per acre irrigated to June 1 and 1/80 cubic foot per second per acre thereafter; further limited to one acre-foot per calendar month June 1 and four acre-feet per acre during the season April 1 to Sept. 30, measured at point of diversion.
Source: LAYCOCK CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
NOT DESCRIBED IN CERTIFICATE				

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	31 E	WM	30	SW NW	3.0

9. The Department received information from the applicant that describes the location of the authorized point of diversion for Certificate 25079 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	30 E	WM	36	NE NE	POD 3 – 395 FEET SOUTH AND 261 FEET WEST FROM THE NE CORNER OF SECTION 36

10. Transfer Application T-13996 proposes to move the authorized point of diversion approximately 1300 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	31 E	WM	31	SW NW	POD 2 – 183 FEET NORTH AND 110 FEET EAST FROM THE EAST 1/4 CORNER OF SECTION 36 TWP 13 S RNG 30 E

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

Certificate: 27792 in the name of JOHN J. SILVERS (perfected under Permit S-25400)
Use: IRRIGATION of 5.6 ACRES
Priority Date: MARCH 19, 1958
Rate: 0.14 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-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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: LAYCOCK CREEK, a tributary of JOHN DAY RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	31 E	WM	31	SW NW	NOT DESCRIBED IN CERTIFICATE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	30 E	WM	25	NE SE	2.0
13 S	31 E	WM	30	SW NW	2.4
13 S	31 E	WM	30	NW SW	1.2
Total					5.6

12. The Department received information from the applicant that describes the location of the authorized point of diversion for Certificate 27792 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	31 E	WM	31	SW NW	POD 1 – 57 FEET NORTH AND 141 FEET EAST FROM THE EAST 1/4 CORNER OF SECTION 36 TWP 13 S RNG 30 E

13. Transfer Application T-13996 proposes to move the authorized point of diversion approximately 200 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	31 E	WM	31	SW NW	POD 2 – 183 FEET NORTH AND 110 FEET EAST FROM THE EAST 1/4 CORNER OF SECTION 36 TWP 13 S RNG 30 E

14. The portion of the third right to be transferred is as follows:

Certificate: 97090 in the name of CHAS. M. TIMMS, SUCCESSOR IN INTEREST TO ARCHIE H. TIMMS (confirmed by John Day River Decree (F))

Use: IRRIGATION of 21.58 ACRES

Priority Date: 1866

Rate: 0.52 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/40 cubic foot per second per acre irrigated to June 1 and 1/80 cubic foot per second per acre thereafter; further limited to one acre-foot per calendar month June 1 and four acre-feet per acre during the season April 1 to Sept. 30, measured at point of diversion.

Source: LAYCOCK CREEK, a tributary of JOHN DAY RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
NOT DESCRIBED IN CERTIFICATE				

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	30 E	WM	25	NE SE	15.00
13 S	30 E	WM	25	SE SE	5.58
13 S	30 E	WM	36	NE NE	1.00
Total					21.58

15. The Department received information from the applicant that describes the location of the authorized point of diversion for Certificate 97090 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	31 E	WM	31	SW NW	POD 1 – 57 FEET NORTH AND 141 FEET EAST FROM THE EAST 1/4 CORNER OF SECTION 36 TWP 13 S RNG 30 E

16. Transfer Application T-13996 proposes to move the authorized point of diversion approximately 200 feet downstream as described below:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
13 S	31 E	WM	31	SW NW	4300	POD 2 – 183 FEET NORTH AND 110 FEET EAST FROM THE EAST 1/4 CORNER OF SECTION 36 TWP 13 S RNG 30 E

17. Transfer Application T-13996 proposes additional points of diversion with approximate distances downstream as described below:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances	Distance from Authorized POD in Feet (ft.)
13 S	30 E	WM	25	NE SE	1000	APOD 5 – 942 FEET SOUTH AND 764 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 25	4500 ft.
13 S	30 E	WM	25	NE SE	900	APOD 6 – 588 FEET SOUTH AND 811 FEET WEST FROM THE EAST 1/4 CORNER OR SECTION 25	5000 ft.
13 S	30 E	WM	25	SE SE	1500	APOD 2 – 540 FEET NORTH AND 414 FEET WEST FROM THE NE CORNER OF SECTION 36	3400 ft.
13 S	30 E	WM	25	SE SE	1400	APOD 3 – 1025 FEET NORTH AND 563 FEET WEST FROM THE NE CORNER OF SECTION 36	3900 ft.
13 S	30 E	WM	25	SE SE	1100	APOD 4 – 1235 FEET NORTH AND 668 FEET WEST FROM THE NE CORNER OF SECTION 36	4100 ft.
13 S	30 E	WM	36	NE NE	1500	APOD 1 – 229 FEET SOUTH AND 211 FEET WEST FROM THE NE CORNER OR SECTION 36	2600 ft.

18. Transfer Application T-13996 assigns the above proposed points of diversion to the following lands:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Point of Diversion
13 S	30 E	WM	25	NE SE	1400	2.70	POD 2, APOD 3
13 S	30 E	WM	25	NE SE	1100	3.30	POD 2, APOD 4
13 S	30 E	WM	25	NE SE	1000	5.00	POD 2, APOD 5
13 S	30 E	WM	25	NE SE	900	4.00	POD 2, APOD 6
13 S	30 E	WM	25	SE SE	1500	2.95	POD 2, APOD 2
13 S	30 E	WM	25	SE SE	1400	1.80	POD 2, APOD 3
13 S	30 E	WM	25	SE SE	1100	0.83	POD 2, APOD 4
13 S	30 E	WM	36	NE NE	1500	1.00	POD 2, APOD 1
						Total	21.58

19. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

Transfer Review Criteria [OAR 690-380-4010(2)]

20. 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.
21. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-13996.
22. The proposed changes would not result in enlargement of the rights.
23. The proposed changes would not result in injury to other water rights.
24. All other application requirements are met.

Determination and Proposed Action

The change in points of diversion and additional points of diversion proposed in Transfer Application T-13996 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-13996 is approved, the final order will include the following:

1. *The change in points of diversion and additional points of diversion proposed in Transfer Application T-13996 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 25079, 27792, and 97090 and any related decree.*
3. *Water right Certificates 25079, 27792, and 97090 are cancelled.*
4. *Under Certificate 25079, the quantity of water diverted at the new point of diversion (POD 2), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 3).*
5. *Under Certificate 27792, the quantity of water diverted at the new point of diversion (POD 2), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 1).*
6. *Under Certificate 97090, the quantity of water diverted at the new point of diversion (POD 2), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 1).*

7. *Under Certificate 97090, the combined quantity of water diverted at the new additional points of diversion (APOD 1, 2, 3, 4, 5 and 6), together with that diverted at the new point of diversion (POD 1), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 1).*
8. *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, with the exception that water rights issued to the Bureau of Reclamation or an irrigation district (or similar entity) are not subject to this condition.*
 - 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.*
9. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

10. *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.*

11. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated in Salem, Oregon on **JUL 11 2024**



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
IVAN GALL, 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

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

June 11, 2024

VIA CERTIFIED MAIL AND E-MAIL

TODD N. AND MISTY D. MCKINLEY
59862 HWY. 26
JOHN DAY, OR 97845

THOMAS WRIGHT
PO BOX 201
CANYON CITY, OR 97820

ROBERT W. GRIFFITH AND
BECKY JO (DENT) GRIFFITH
PO BOX 585
MT. VERNON, OR 97865

WADE E. WADDEL
27392 BRAGGA WAY
JOHN DAY, OR 97845

KIRK AND JOANN HUMPHREY
PO BOX 354
MT. VERNON, OR 97865

JAMES AND MARY T. WEAVER
PO BOX 572
JOHN DAY, OR 97845

SUBJECT: Water Right Transfer Application T-13996

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13996. 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 Blue Mountain Eagle 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 503-986-0890/503-986-0886 or Patrick.K.Starnes@wrdd.state.or.us if I may be of assistance.

Sincerely,

Scott Grew

Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-13996
Eric W. Julsrud, District 4 Watermaster (*via e-mail*)
Becky Jo Griffith, Agent for the applicant (*via e-mail*)
Tracy Wyllie, ODFW (*via e-mail*)

encs