

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13699, GRANT County	)	PROPOSING APPROVAL OF CHANGES IN
	)	POINTS OF DIVERSION AND PLACES 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.

Applicant

MGN, LLC.
5256 S. MISSION RD. STE 205
BONSALL, CA 92003

Findings of Fact

1. On May 3, 2021, MGN, LLC, filed an application to change the points of diversion and to change the places of use under Certificates 25324 and 25608. The Department assigned the application number T-13699.
2. Notice of the application for transfer was published on May 18, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 15, 2023, the Department met with the applicant via zoom regarding the Department's review of Transfer Application T-13699, the potential injury caused to downstream users, enlargement of the right, amendments to the application and potentially amending the Department's Watermaster's review based on the amended pages and maps.
4. On May 26, 2023, the agent for the applicant submitted amended application pages and maps to the Department.
5. On February 29, 2024, the Department contacted the agent for the applicant for clarification of the Q-Q description for proposed POD #5. The agent clarified the Q-Q location as SE NE as described on the Transfer Map.

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.

6. On February 29, 2024, the Department sent a copy of the draft Preliminary Determination proposing to deny Transfer Application T-13699 due to a finding of injury of Water Right Certificate 25517. The draft Preliminary Determination cover letter set forth a deadline of March 28, 2024, for the applicant to respond. The applicant also 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. The applicant intended to request consent from the holder of affected water right, Certificate 25517, to address the potential injury.
7. On May 13, 2024, pursuant to ORS 540.530(1)(b) and OAR 690-380-5030(1), the applicant provided the Department with a notarized affidavit of consent from the holder of affected right, Certificate 25517, consenting to the proposed changes under Transfer Application T-13699.

8. The first right to be transferred is as follows:

Certificate: 25324 in the name of MABELLE HESSER (confirmed by the John Day River (F) Decree of Record at Salem in the Order Record of the Water Resources Director, in Volume 15, Page 461)

Use: IRRIGATION of 42.2 ACRES

Priority Date: 1883

Limit/Duty: The amount of water to which such right is entitled, for 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 to June 1 and four acre-feet per acre during season April 1 to Sept. 30, measured at point of diversion.

Period of Use: APRIL 1 THROUGH SEPTEMBER 30

Source: FOX CREEK

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
11 S	30 E	WM	8	SW NE	23.6
11 S	30 E	WM	8	SE NE	18.6
Total Acres					42.2

9. Certificate 25324 does not specify the location of the points of diversion. However, based upon information provided by the applicant, the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
11 S	30 E	WM	8	SE NE	#5 - 2450 FEET SOUTH AND 80 FEET WEST FROM THE NE CORNER OF SECTION 8
11 S	30 E	WM	9	SW NW	#4 - 2630 FEET SOUTH AND 70 FEET EAST FROM THE NW CORNER OF SECTION 9

10. Transfer Application T-13699 proposes to move the authorized points of diversion downstream with approximate distances from the authorized points of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Appx. Distance from Auth POD
11 S	30 E	WM	8	NW NE	#1 - 1280 FEET SOUTH AND 2230 FEET WEST FROM THE NE CORNER OF SECTION 8	#4 - 0.5 mile #5 - 0.4 mile

11. Transfer Application T-13699 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
11 S	30 E	WM	8	SW NE	7.6
11 S	30 E	WM	8	SE NW	32.7
11 S	30 E	WM	8	NE SW	1.7
11 S	30 E	WM	8	NW SE	0.2
Total Acres					42.2

12. The portion of the second right to be transferred is as follows:

Certificate: 25608 in the name of C.W. MULLIGAN (confirmed by the John Day River (F) Decree of Record at Salem in the Order Record of the Water Resources Director, in Volume 15, Page 461.)

Use: IRRIGATION of 1.5 acres from POD 3

Priority Date: 1884

Limit/Duty: 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 prior to June 1, but not to exceed four acre-feet per acre during season April to September 30, measured at point of diversion.

Period of Use: APRIL 1 to SEPT. 30

Source: Murphy Creek tributary of Fox Creek and Fox Creek

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
11 S	30 E	WM	9	SE NW	0.3
11 S	30 E	WM	9	NE SW	1.2
Total Acres					1.5

13. Certificate 25324 does not specify the location of the points of diversion. However, based upon information provided by the applicant, the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
11 S	30 E	WM	9	SE NW	#3 - 2450 FEET SOUTH AND 1840 FEET EAST FROM THE NW CORNER OF SECTION 9
11 S	30 E	WM	9	SE SW	#2 - 520 FEET NORTH AND 1960 FEET EAST FROM THE SW CORNER OF SECTION 9

14. Transfer Application T-13699 proposes to move the authorized points of diversion downstream with approximate distances from the authorized points of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Appx. Distance from Auth POD
11 S	30 E	WM	8	NW NE	#1 - 1280 FEET SOUTH AND 2230 FEET WEST FROM THE NE CORNER OF SECTION 8	#2 – 1.1 mile #3 – 0.8 mile

15. Transfer Application T-13699 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
11 S	30 E	WM	8	SW NW	1.5

16. 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 690-380-0100(14), 690-380-4010(2), 690-380-2110(2), and 690-380-2200]

17. Water has been used within the five-year period prior to submittal of Transfer Application T-13699 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.
18. A water delivery 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-13699.
19. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
20. The proposed points of diversion divert water from the same source of surface water as the authorized points of diversion, as required by OAR 690-380-2110(2).
21. The proposed changes would not result in enlargement of the rights.
22. The proposed change in places of use of Certificates 25324 and 25608 would alter the return flow pattern, routing of return flows around at least one diversion of an existing water right resulting in injury to Certificate 25517. Certificate 25517 is a downstream water right and may be subject to earlier regulation with a lack of return flow from the places of use under Certificates 25324 and 25608. The current holder of Certificate 25517 provided consent for Transfer Application T-13699.
23. All other application requirements are met.

Determination and Proposed Action

The changes in points of diversion and changes in places of use proposed in Transfer Application T-13699 appear to be not 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-13699 is approved, the final order will include the following:

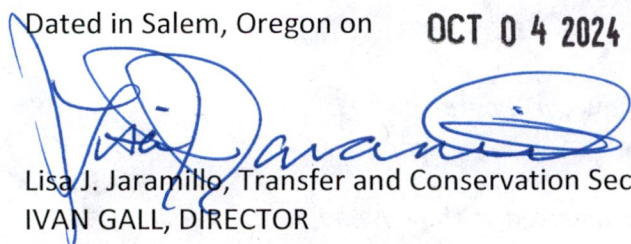
- 1. The change in points of diversion and change in places of use proposed in Transfer Application T-13699 are approved.*
- 2. The right to the use of the water is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in Certificates 25324 and 25608 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 diversion and/or the new places of use.*
- 4. Water right Certificate 25324 is cancelled.*
- 5. Water right Certificate 25608 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
- 6. Under Certificate 25324, the quantity of water diverted at the new point of diversion (#1), shall not exceed the quantity of water lawfully available at the original points of diversion (#4 and #5).*
- 7. Under Certificate 25608, the quantity of water diverted at the new point of diversion (#1), shall not exceed the quantity of water lawfully available at the original points of diversion (#2 and #3).*
- 8. Water shall be acquired from the same source of surface water as the original points of diversion.*
- 9. The former places of use of the transferred rights shall no longer receive water under the rights.*
- 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 diversion (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.*

11. *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.

12. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2026**. 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.*
13. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on **OCT 04 2024**


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

October 4, 2024

VIA CERTIFIED MAIL AND E-MAIL

Applicant

MGN, LLC
5256 S MISSION RD STE 205
BONSALL, CA 92003

SUBJECT: Water Right Transfer Application T-13699

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13699. 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 Eastern 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 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-13699
Eric W. Julsrud, District 4 Watermaster (*via e-mail*)
John A. Short, Agent for the applicant (*via e-mail*)
Stefan Kelly, Confederated Tribes of Warm Springs, (*via e-mail*)

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