

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13753, Polk County	)	PROPOSING APPROVAL OF CHANGES IN
	)	POINTS OF DIVERSION

**Applicant**

JOSE ANTONIO JUAREZ ADAME  
VERONICA JUAREZ LEMUS  
8610 BROADMEAD RD  
AMITY, OR 97101

**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 (POD), place of use (POU), 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.

**Findings of Fact**

1. On June 28, 2021, JOSE ANTONIO JUAREZ ADAME and VERONICA JUAREZ LEMUS filed an application to change the points of diversion under Certificates 87955, 94690 and 95696. The Department assigned the application number T-13753.
2. Notice of the application for transfer was published on July 13, 2021, pursuant to OAR 690-380-4000(3). No comments were filed in response to the notice.
3. On July 31, 2024, the Department sent a copy of the draft Preliminary Determination to the applicants, proposing to approve Transfer Application T-13753. The draft Preliminary Determination cover letter provided a deadline of August 30, 2024, for the applicants to respond and submit the required information. 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.

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.

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

**Certificate:** 87955 in the name of BROADMEAD LLC (perfected under PERMIT R-12635)  
**Use:** STORAGE for NURSERY OPERATIONS  
**Priority Date:** SEPTEMBER 10, 1996  
**Rate:** 17.5 ACRE-FEET  
**Period of Use:** NOVEMBER 1 THROUGH JUNE 30  
**Source:** SALT CREEK, tributary to SOUTH YAMHILL RIVER

**Location of Dam:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	5 W	WM	11	SW SW	47	2237 FEET NORTH AND 380 FEET EAST FROM THE SW CORNER OF JOHN EADES DLC 47

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	5 W	WM	11	SE SW	47	POD 1 - 2228 FEET NORTH AND 1405 FEET EAST FROM THE SW CORNER OF JOHN EADES DLC 47

**Authorized Place of Use:**

STORAGE						
Twp	Rng	Mer	Sec	Q-Q	DLC	
6 S	5 W	WM	11	SW SW	47	

5. Transfer Application T-13753 proposes to move the authorized POD under Certificate 87955 approximately 1,000 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	5 W	WM	11	SW SW	47	POD 3 - 1866 FEET NORTH AND 456 FEET EAST FROM THE SW CORNER OF JOHN EADES DLC 47

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

**Certificate:** 94690 in the name of BROADMEAD LLC (perfected under PERMIT S-53555)  
**Use:** STORED WATER and NURSERY USE on 20.75 ACRES  
**Priority Date:** SEPTEMBER 10, 1996  
**Rate:** 1.0 CUBIC FOOT PER SECOND, in case of rotation, and 17.5 ACRE FEET measured at the point of diversion  
**Limit/Duty:** The amount of water used for NURSERY OPERATIONS is limited to 0.15 cubic foot per second per acre. For irrigation of **containerized nursery plants**, the amount of water diverted is limited to ONE-FORTIETH of one cubic foot per second (or its equivalent) and 5.0 acre feet per acre per year. For the irrigation of **in-ground nursery plants**, the amount of water diverted under this right is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre per year. The use of water for NURSERY OPERATION may be made at any time that the use is

beneficial. For the irrigation of **any other crop**, the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre during the irrigation season of each year.

**Period of Use:** STORED WATER – YEAR ROUND

LIVE FLOW (SALT CREEK) - NOVEMBER 1 THROUGH APRIL 30

**Source:** A RESERVOIR and SALT CREEK, tributaries to SOUTH YAMHILL RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	5 W	WM	11	SE SW	47	POD 1 - 2228 FEET NORTH AND 1405 FEET EAST FROM THE SW CORNER OF JOHN EADES DLC 47
6 S	5 W	WM	11	SW SW	47	POD 2 - 2495 FEET NORTH AND 283 FEET EAST FROM THE SW CORNER OF EADES DLC 47

**Authorized Place of Use:**

NURSERY USE						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	5 W	WM	11	NE SW	47	0.70
6 S	5 W	WM	11	NW SW	47	10.95
6 S	5 W	WM	11	SW SW	47	7.60
6 S	5 W	WM	11	SE SW	47	0.60
6 S	5 W	WM	14	NW NW	47	0.90
TOTAL						20.75

7. Transfer Application T-13753 proposes to move POD 1 on Certificate 94690 approximately 1,000 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	5 W	WM	11	SW SW	47	POD 3 - 1866 FEET NORTH AND 456 FEET EAST FROM THE SW CORNER OF JOHN EADES DLC 47

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

**Certificate:** 95696 in the names of JOSE ANTONIO JUAREZ ADAME and VERONICA JUAREZ LEMUS (PERFECTED UNDER PERMIT S-21652)

**Use:** IRRIGATION of 21.05 ACRES

**Priority Date:** MARCH 28, 1950

**Rate:** 0.19 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated from direct flow, 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 from direct flow.

**Source:** SALT CREEK, tributary to SOUTH YAMHILL RIVER



**Authorized Point of Diversion and Dam:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
6 S	5 W	WM	14	NW NE	3	ORIGINAL (POD A) – NONE GIVEN

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	5 W	WM	11	NE SW	47	0.70
6 S	5 W	WM	11	NW SW	47	10.95
6 S	5 W	WM	11	SW SW	47	7.30
6 S	5 W	WM	11	SE SW	47	1.70
6 S	5 W	WM	14	NW NW	47	0.40
TOTAL						21.05

9. Transfer Application T-13753 proposes to move the authorized point of diversion on Certificate 95696 approximately 1,000 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	5 W	WM	11	SW SW	47	POD 3 - 1866 FEET NORTH AND 456 FEET EAST FROM THE SW CORNER OF JOHN EADES DLC 47

10. 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) and OAR 690-380-2110(2)]***

11. Water has been used within the five-year period prior to submittal of Transfer Application T-13753 according to the terms and conditions of the right. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
12. A water delivery 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-13753.
13. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
14. The proposed point of diversion diverts water from the same source of surface water as the authorized points of diversion, as required by OAR 690-380-2110(2).
15. The proposed change would not result in enlargement of the rights.
16. The proposed change, as conditioned, would not result in injury to other water rights.
17. All other applications requirements are met.

## **Determination and Proposed Action**

The changes in points of diversion proposed under Transfer Application T-13753, appears 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-13753 is approved, the final order will include the following:*

- 1. The changes in points of diversion under Certificates 87955, 94690 and 95696 proposed in Transfer Application T-13753 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 98955, 94690 and 95696 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.*
- 4. Water right Certificates 87955, 94690 and 95696 are cancelled.*
- 5. Under Certificate 87955, the quantity of water diverted at the new point of diversion (POD 3), together with that diverted at the original point of diversion (POD 1), shall not exceed the quantity of water lawfully available at the original points of diversion (POD 1).*
- 6. Under Certificate 94690, the quantity of water diverted at the new point of diversion (POD 3), together with that diverted at the original points of diversion (POD 1 and POD 2), shall not exceed the quantity of water lawfully available at the original points of diversion (POD 1 and POD 2).*
- 7. Under Certificate 95696, the quantity of water diverted at the new point of diversion (POD 3), together with that diverted at the original point of diversion (POD A), shall not exceed the quantity of water lawfully available at the original point of diversion (POD A).*
- 8. Water shall be acquired from the same source of surface water as the original points of diversion.*
- 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 and conditions 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 change 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

**OCT 30 2024**

  
Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
IVAN GALL, DIRECTOR  
Oregon Water Resources Department

This Preliminary Determination was prepared by Kim French. If you have questions about the information in this document, you may reach me at 503 979-9607 or Kim.R.French@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.

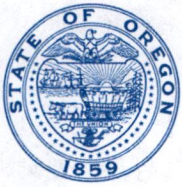
**Notice Regarding Servicemembers:** Active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 1-800-452-8260, the Oregon Military Department at 971-355-4420, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.

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 Patricia McCarty at 503-979-9160.

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](http://www.oregon.gov/owrd)

October 30, 2024

VIA CERTIFIED MAIL AND E-MAIL

JOSE ANTONIO JUAREZ ADAME  
VERONICA JUAREZ LEMUS  
8610 BROADMEAD RD  
AMITY, OR 97101

SUBJECT: Water Right Transfer Application T-13753

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13753. 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 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 Department's notice.

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 [Kim.R.French@water.oregon.gov](mailto:Kim.R.French@water.oregon.gov), if I may be of assistance.

Sincerely,

Kim French  
Transfer Specialist  
Transfer and Conservation Section

cc: Transfer Application file T-13753  
Joel M. Plahn, District 22 Watermaster *(via e-mail)*  
Jeanne Boatwright, Agent for the applicant *(via e-mail)*

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