

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13542, Washington County)	PROPOSING APPROVAL FOR AN
)	ADDITIONAL POINT OF APPROPRIATION,
)	A CHANGE IN PLACE OF USE, A CHANGE
)	IN CHARACTER OF USE, PARTIAL
)	CANCELLATION OF A WATER RIGHT
)	CERTIFICATE, AND PARTIAL
)	CANCELLATION OF A WATER USE PERMIT

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 to voluntarily request that it be cancelled.

Applicant

MF BEEF BEND, LLC
ATTN: JOHN O'NEIL
17933 NW EVERGREEN PARKWAY, SUITE 300
BEAVERTON, OR 97006

Receiving Landowner

AGC PROPERTIES, LLC
ATTN: MARK BIGEJ
1220 N PACIFIC HIGHWAY
WOODBURN, OR 97071

Findings of Fact

1. On November 5, 2020, MF BEEF BEND, LLC, ATTN: JOHN O'NEIL filed an application for an additional point of appropriation, to change the place of use, and to change the character of use under Certificate 51171. The Department assigned the application number T-13542.
2. AGC PROPERTIES, LLC, ATTN: MARK BIGEJ is the receiving landowner who will be responsible for completion of the changes.

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.

3. Notice of the application for transfer was published on November 10, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On December 1, 2021, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of deficiencies in the application. The application did not include a Supplemental Form D, as the authorized and proposed place of use is located within the Tualatin Valley Irrigation District (District) and is also layered with Permit S-54499 in the name of the District. Certificate 58499 in the name of MF Beef Bend, LLC is also layered with the portion of Certificate 51171 involved in T-13542 and was not included in the application pursuant to OAR 690-380-2240. Table 2 described 14.0 acres being transferred off of the "FROM" lands, and only 8.0 acres on the "TO" lands, so the amount of acres being transferred wasn't clear. The Department requested that the deficiencies be resolved by January 3, 2022.
5. On February 6, 2024, the Department received a revised application, map, and an Affidavit for the Voluntary Cancellation of a Portion of Water Right Certificate 58499.
6. On March 28, 2024, the Department received an Affidavit for the Voluntary Cancellation of a Portion of Water Use Permit S-54499 from the District, resolving the deficiencies.
7. On October 4, 2024, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13542 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 4, 2024, for the applicant to respond. 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.

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

Certificate:	51171 in the name of PORTER WALTON CO, INC. (perfected under Permit G-5476)
Use:	IRRIGATION OF 16.0 ACRES
Priority Date:	MAY 5, 1971
Rate:	0.10 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 and is subject to all terms and conditions of an order of the State Engineer entered May 17, 1974, including its consideration as Item 81 and added to paragraph 9 of the order.
Source:	A WELL, a tributary of TUALATIN RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 S	1 W	WM	18	SE NE	42	(WELL 1) - 1020 FEET NORTH AND 480 FEET WEST FROM THE E1/4 CORNER OF SECTION 18

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	1 W	WM	18	SE NE	42	15.3
2 S	1 W	WM	18	NE SE		0.7
Total						16.0

9. Transfer Application T-13542 proposes an additional point of appropriation approximately 916 feet Southwest from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 S	1 W	WM	18	SE NE	42	WELL 2 - 130 FEET NORTH AND 700 FEET WEST FROM THE E1/4 CORNER OF SECTION 18

10. Transfer Application T-13542 also proposes to change the place of use of the right to:

NURSERY AND COMMERCIAL USE						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	1 W	WM	18	SE NE	42	6.4
2 S	1 W	WM	18	NE SE		1.6
Total						8.0

11. Transfer Application T-13542 proposes to change the character of use to Nursery and Commercial Use.
12. The applicant proposes to double the acres on a deficient irrigation right to get a higher irrigation rate, while reducing the number of acres irrigated to one half; i.e. change from 16.0 acres irrigated, to 8.0 acres irrigated.
13. Certificate 51171 does not specify a season of use; therefore, pursuant to the Tualatin River decree, the season of use is May 1 to September 30.
14. On May 16, 2019, the Department approved Transfer Application T-12699, recorded at Special Order Volume 113, Pages 123-128. The final order contained a scrivener's error in the description of the existing acres under Permit S-54499 below in bold:

ROWELL BROTHERS – SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	2 W	WM	15	NW NW	7.9

The correct description of the existing acres under Permit S-54499 are shown below in bold:

ROWELL BROTHERS – SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	2 W	WM	15	NW NW	7.8

Transfer Review Criteria [OAR 690-380-0100(14), 690-380-4010(2), OAR 690-380-2110(2), 690-380-2200, and 690-380-2300]

15. Water has been used within the last five years 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.
16. A water delivery system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-13542.
17. The water right is subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
18. The proposed point of appropriation develops groundwater from the same aquifer as the authorized point of appropriation, as required by OAR 690-380-2110(2).
19. The proposed changes would not result in enlargement of the right if the rate of appropriation for the change in character of use from irrigation to the proposed nursery and commercial use is limited to 0.10 cubic foot per second and be further limited to a total volume of 40.0 Acre-Feet (AF) (16.0 acres x 2.5 AF per acre) during the season of use, being May 1 to September 30. Further limited such that:
 - a) The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.10 cubic foot per second per acre and 40.0 acre-feet per acre during the irrigation season of each year.
 - b) For the irrigation of containerized nursery plants, the amount of water diverted is limited to 0.10 cubic foot per second (or its equivalent) and 40.0 acre-feet per acre during the irrigation season of each year.
 - c) For the irrigation of in-ground nursery plants, the amount of water diverted is limited to 0.10 cubic foot per second (or its equivalent) and 40.0 acre-feet per acre during the irrigation season of each year.
 - d) For the irrigation of any other crop, the amount of water diverted is limited to 0.10 cubic foot per second (or its equivalent) and 40.0 acre-feet per acre during the irrigation season of each year. The use of water for irrigation of any other crop shall be limited to 8.0 acres.

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

21. All other application requirements are met.

Partial Cancellation of a Water Right

22. On February 6, 2024, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from MF Beef Bend, LLC, Attn: John O'Neil. The portion of the right to be cancelled is as follows:

Certificate: 58499 in the name of PORTER-WALTON CO., INC. (perfected under Permit S-45854)
Use: SUPPLEMENTAL IRRIGATION OF 12.7 ACRES
Priority Date: APRIL 1, 1980
Rate: 0.13 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. THE DIVERSION OF WATER DURING THE PERIOD FROM JULY 31 TO SEPTEMBER 15 SHALL BE FROM STORED WATER ONLY.
Source: AN UNNAMED STREAM AND RESERVOIR CONSTRUCTED UNDER PERMIT R-8279, a tributary of TUALATIN RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	1 W	WM	18	NE SE	2270 FEET NORTH AND 200 FEET WEST FROM THE SE CORNER OF SECTION 18

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	1 W	WM	18	SE NE	42	12.0
2 S	1 W	WM	18	NE SE		0.7
Total						12.7

Partial Cancellation of a Water Use Permit

23. On March 28, 2024, an affidavit certifying that a portion of a water use permit has been abandoned and requesting cancellation of the permit was received from Tualatin Valley Irrigation District. The portion of the permit to be cancelled is as follows:

Permit: S-54499 in the name of TUALATIN VALLEY IRRIGATION DISTRICT
Use: PRIMARY IRRIGATION OF 12.7 ACRES

Priority Date: JANUARY 4, 1984 for 0.11 CUBIC FOOT PER SECOND and DECEMBER 18, 1986 for 0.02 CUBIC FOOT PER SECOND

Rate: 0.13 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, 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: UNIFIED SEWAGE AGENCY ROCK CREEK TREATMENT PLANT DISCHARGE

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	1 W	WM	18	NE SW	NPI NURSERIES: 870 FEET SOUTH AND 660 FEET WEST FROM THE CENTER OF SECTION 18

Authorized Place of Use:

NPI NURSERIES – PRIMARY IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	1 W	WM	18	SE NE	42	12.0
2 S	1 W	WM	18	NE SE		0.7
					Total	12.7

Determination and Proposed Action

The additional point of appropriation, change in place of use, and change in character of use proposed in Transfer Application T-13542 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portion of the right and permit will be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned right and permit will be cancelled.

If Transfer Application T-13542 is approved, the final order will include the following:

- 1. The additional point of appropriation, change in place of use, and change in character of use proposed in Transfer Application T-13542 is approved. The portion of the right and Permit S-54499 that have been abandoned are 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 51171 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 additional point of appropriation or the new place of use.*

4. *Water right Certificates 51171 and 58499, and Permit S-54499 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer and cancellation.*
5. *Permit S-55522, in the name of Tualatin Valley Irrigation District, is issued to replace Permit S-54499, and incorporates the partial cancellation and correction approved by this order, Permit S-54499, in the name of Tualatin Valley Irrigation District, is no longer of any force or effect.*
6. *The rate of diversion for the change in character of use from irrigation to the proposed nursery and commercial use shall be limited to 0.10 cubic foot per second and shall be further limited to a total volume diverted of 40.0 acre-feet (16.0 x 2.5 acre-feet per acre) during the season of use being, May 1 to September 30.*
7. *The change in character of use from irrigation to the proposed nursery use shall be further limited such that:*
 - a. *The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.10 cubic foot per second per acre and 40.0 acre-feet per acre during the irrigation season of each year.*
 - b. *For the irrigation of containerized nursery plants, the amount of water diverted is limited to 0.10 cubic foot per second (or its equivalent) and 40.0 acre-feet per acre during the irrigation season of each year.*
 - c. *For the irrigation of in-ground nursery plants, the amount of water diverted is limited to 0.10 cubic foot per second (or its equivalent) and 40.0 acre-feet per acre during the irrigation season of each year.*
 - d. *For the irrigation of any other crop, the amount of water diverted is limited to 0.10 cubic foot per second (or its equivalent) and 40.0 acre-feet per acre during the irrigation season of each year. The use of water for irrigation of any other crop shall be limited to 8.0 acres.*
8. *The quantity of water diverted at the new additional point of appropriation (Well 2), together with that diverted at the original point of appropriation (Well 1), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 1).*
9. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
10. *The former place of use of the transferred right shall no longer receive water under the right.*

11. *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.*

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 change and full beneficial use of the water.*

13. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on **FEB 03 2025**


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

This Preliminary Determination was prepared by 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

February 3, 2025

VIA CERTIFIED MAIL AND E-MAIL

MF BEEF BEND, LLC
ATTN: JOHN O'NEIL
17933 NW EVERGREEN PARKWAY, SUITE 300
BEAVERTON, OR 97006

SUBJECT: Water Right Transfer Application T-13542

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13542. 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 Sherwood Gazette 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, appearing to read "Corey Courchane".

Corey Courchane
Allocation of Conserved Water
Transfer and Conservation Section

cc: Transfer Application file T-13542
Jacob W. Constans, District 18 Watermaster (*via e-mail*)
Ted Ressler, Agent for the applicant (*via e-mail*)
AGC Properties, LLC, Attn: Mark Bigej, Receiving Landowner (*via e-mail*)

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