

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13618, Klamath County	)	PROPOSING DENIAL OF A CHANGE IN
	)	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.

**Applicant**

TROUT UNLIMITED  
1453 ESPLANADE AVE.  
KLAMATH FALLS, OR 97601

**Findings of Fact**

1. On February 16, 2021, TROUT UNLIMITED filed an application to change the point of diversion under Certificates 1091, 1094, 1104, 1107, 1108, 1109, and 1111. The Department assigned the application number T-13618.
2. Notice of the application for transfer was published on March 23, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 27, 2024, the Department sent a copy of the draft Preliminary Determination proposing to deny Transfer Application T-13618 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 27, 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.

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

**Certificate:** 1091 in the name of F. M. DENTON (confirmed by WOOD RIVER Decree)  
**Use:** IRRIGATION of 261.0 ACRES of land, DOMESTIC and STOCK USE  
**Priority Date:** APRIL 1898  
**Rate:** 3.26 CUBIC FEET PER SECOND FROM APRIL 1<sup>ST</sup> TO JULY 20<sup>TH</sup> OF EACH YEAR AND THEREAFTER UNTIL THE CLOSE OF THE IRRIGATING SEASON 1.63

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.

CUBIC FEET PER SECOND, OR THE EQUIVALENT THEREOF IN CASE OF ROTATION; THE TOTAL QUANTITY DELIVERED NOT TO EXCEED THREE ACRE FEET FOR EACH ACRE IRRIGATED

**Source:** ANNA CREEK, a tributary of WOOD RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
<i>Not specified in certificate</i>				

**Authorized Place of Use:**

IRRIGATION, DOMESTIC AND STOCK USE					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	8	NE SE	40.0
33 S	7.5 E	WM	8	SE SE	30.0
33 S	7.5 E	WM	9	NE SW	40.0
33 S	7.5 E	WM	9	NW SW	40.0
33 S	7.5 E	WM	9	SW SW	40.0
33 S	7.5 E	WM	9	SE SW	40.0
33 S	7.5 E	WM	9	NW SE	7.0
33 S	7.5 E	WM	9	SW SE	24.0
Total					261.0

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

**Certificate:** 1094 in the name of JAMES L. GORDEN (confirmed by ANNA CREEK Decree)

**Use:** IRRIGATION of 58.0 ACRES of land, DOMESTIC and STOCK USE

**Priority Date:** 1892 for the IRRIGATION of TRACT NO. 1

**Rate:** 0.85 CUBIC FOOT PER SECOND (CFS) FROM APRIL 1<sup>ST</sup> TO JULY 20<sup>TH</sup> OF EACH YEAR AND THEREAFTER UNTIL THE CLOSE OF THE IRRIGATING SEASON 0.43 CFS, OR THE EQUIVALENT THEREOF IN CASE OF ROTATION; THE TOTAL QUANTITY DELIVERED NOT TO EXCEED THREE ACRE FEET FOR EACH ACRE IRRIGATED

**Source:** ANNA CREEK, tributary of WOOD RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
<i>Not specified in certificate</i>				

**Authorized Place of Use:**

IRRIGATION, DOMESTIC AND STOCK USE – TRACT NO. 1					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	9	NE NW	24.0
33 S	7.5 E	WM	9	SE NW	34.0
Total					58.0

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

**Certificate:** 1104 in the name of W. E. NICHOLSON of FT. KLAMATH, STATE OF OREGON and L. E. STURGIS of EVERILL, WASHINGTON (confirmed by ANNA CREEK Decree)

**Use:** IRRIGATION of 160.0 ACRES of land, DOMESTIC and STOCK USE

**Priority Date:** APRIL 1898

**Rate:** 2.00 CUBIC FEET PER SECOND FROM APRIL 1<sup>ST</sup> TO JULY 20<sup>TH</sup> OF EACH YEAR AND THEREAFTER UNTIL THE CLOSE OF THE IRRIGATING SEASON 1.00 CUBIC FOOT PER SECOND, OR THE EQUIVALENT THEREOF IN CASE OF ROTATION; THE TOTAL QUANTITY DELIVERED NOT TO EXCEED THREE ACRE FEET FOR EACH ACRE IRRIGATED

**Source:** ANNA CREEK, a tributary of WOOD RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
<i>Not specified in certificate</i>				

**Authorized Place of Use:**

IRRIGATION, DOMESTIC AND STOCK USE					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	21	NE SW	40.0
33 S	7.5 E	WM	21	NW SW	40.0
33 S	7.5 E	WM	21	SW SW	40.0
33 S	7.5 E	WM	21	SE SW	40.0
Total					160.0

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

**Certificate:** 1107 in the name of JAMES PELTON (confirmed by WOOD RIVER Decree)

**Use:** IRRIGATION of 315.0 ACRES of land, DOMESTIC and STOCK USE

**Priority Date:** APRIL 1898 for the IRRIGATION OF TRACT NO. 1

**Rate:** 3.83 CUBIC FEET PER SECOND (CFS) FROM APRIL 1<sup>ST</sup> TO JULY 20<sup>TH</sup> OF EACH YEAR AND THEREAFTER UNTIL THE CLOSE OF THE IRRIGATING SEASON 1.91 CFS, OR THE EQUIVALENT THEREOF IN CASE OF ROTATION; THE TOTAL QUANTITY DELIVERED NOT TO EXCEED THREE ACRE FEET FOR EACH ACRE IRRIGATED

**Source:** ANNA CREEK, a tributary of WOOD RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
<i>Not specified in certificate</i>				



**Authorized Place of Use:**

IRRIGATION, DOMESTIC AND STOCK USE – TRACT NO. 1					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	16	NW NE	34.0
33 S	7.5 E	WM	16	SW NE	46.0
33 S	7.5 E	WM	16	NE NW	40.0
33 S	7.5 E	WM	16	NW NW	35.0
33 S	7.5 E	WM	16	SW NW	25.0
33 S	7.5 E	WM	16	SE NW	40.0
33 S	7.5 E	WM	16	NE SW	40.0
33 S	7.5 E	WM	16	NW SW	15.0
33 S	7.5 E	WM	16	NW SE	40.0
Total					315.0

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

**Certificate:** 1108 in the name of HORACE AND META M. PELTON (confirmed by WOOD RIVER Decree)

**Use:** IRRIGATION of 160.0 ACRES of land, DOMESTIC and STOCK USE

**Priority Date:** 1892 for the IRRIGATION OF TRACT NO. 1

**Rate:** 2.00 CUBIC FEET PER SECOND (CFS) FROM APRIL 1<sup>ST</sup> TO JULY 20<sup>TH</sup> OF EACH YEAR AND THEREAFTER UNTIL THE CLOSE OF THE IRRIGATING SEASON 1.00 CFS, OR THE EQUIVALENT THEREOF IN CASE OF ROTATION; THE TOTAL QUANTITY DELIVERED NOT TO EXCEED THREE ACRE FEET FOR EACH ACRE IRRIGATED

**Source:** ANNA CREEK, a tributary of WOOD RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
<i>Not specified in certificate</i>				

**Authorized Place of Use:**

IRRIGATION, DOMESTIC AND STOCK USE – TRACT NO. 1					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	8	NE NE	40.0
33 S	7.5 E	WM	8	SE NE	40.0
33 S	7.5 E	WM	9	NW NW	40.0
33 S	7.5 E	WM	9	SW NW	40.0
Total					160.0

9. The sixth right to be transferred is as follows:

**Certificate:** 1109 in the name of D. W. RYAN (confirmed by WOOD RIVER and ANNA CREEK (F) Decrees)

**Use:** IRRIGATION of 40.0 ACRES of land, DOMESTIC and STOCK USE

**Priority Date:** APRIL, 1898 for the IRRIGATION OF TRACT NO. 2

**Rate:** 0.5 CUBIC FOOT PER SECOND (CFS) FROM APRIL 1<sup>ST</sup> TO JULY 20<sup>TH</sup> OF EACH YEAR AND THEREAFTER UNTIL THE CLOSE OF THE IRRIGATING SEASON 0.25 CFS, OR THE EQUIVALENT THEREOF IN CASE OF ROTATION; THE TOTAL QUANTITY DELIVERED NOT TO EXCEED THREE ACRE FEET FOR EACH ACRE IRRIGATED

**Source:** ANNA CREEK, a tributary of WOOD RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
<i>Not specified in certificate</i>				

**Authorized Place of Use:**

IRRIGATION, DOMESTIC AND STOCK USE – TRACT NO. 2					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	21	SE NW	40.0

10. The seventh right to be transferred is as follows:

**Certificate:** 1111 in the name of L. C. SIZEMORE (confirmed by ANNA CREEK (F) Decree)

**Use:** IRRIGATION of 282.0 ACRES of land, DOMESTIC and STOCK USE

**Priority Date:** APRIL 1898 for the IRRIGATION of TRACT NO. 2

**Rate:** 3.53 CUBIC FEET PER SECOND (CFS) FROM APRIL 1<sup>ST</sup> TO JULY 20<sup>TH</sup> OF EACH YEAR AND THEREAFTER UNTIL THE CLOSE OF THE IRRIGATING SEASON 1.76 CFS, OR THE EQUIVALENT THEREOF IN CASE OF ROTATION; THE TOTAL QUANTITY DELIVERED NOT TO EXCEED THREE ACRE FEET FOR EACH ACRE IRRIGATED

**Source:** ANNA CREEK, a tributary of WOOD RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
<i>Not specified in certificate</i>				

**Authorized Place of Use:**

IRRIGATION, DOMESTIC AND STOCK USE – TRACT NO. 2					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	7.5 E	WM	16	SW SW	40.0
33 S	7.5 E	WM	16	SE SW	40.0
33 S	7.5 E	WM	16	SW SE	40.0
33 S	7.5 E	WM	21	NE NE	12.0
33 S	7.5 E	WM	21	NW NE	30.0
33 S	7.5 E	WM	21	NE NW	40.0
33 S	7.5 E	WM	21	NW NW	40.0
33 S	7.5 E	WM	21	SW NW	40.0
Total					282.0

11. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificates 1091, 1094, 1104, 1107, 1108, 1109, and 1111 as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
33 S	7.5 E	WM	5	SE NW	200	STORMER DITCH POD #1 - 2556.1 FEET SOUTH AND 241.4 FEET WEST FROM THE N1/4 CORNER OF SECTION 5

12. Transfer Application T-13618 proposes to move the authorized point of diversion approximately 424.3 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
33 S	7.5 E	WM	5	SE NW	200	POD #2 - 2626.9 FEET SOUTH AND 626.7 FEET WEST FROM THE N1/4 CORNER OF SECTION 5

13. 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), and 690-380-2110(2)]***

14. 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.
15. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights was present within the five-year period prior to submittal of Transfer Application T-13618.
16. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
17. The proposed point of diversion diverts water from the same source of surface water as the authorized point of diversion, as required by OAR 690-380-2110(2).
18. The proposed change would not result in enlargement of the rights.
19. An instream water right, Certificate 73392, exists for the reach of the river in which the authorized point of diversion would be moved upstream, and stream flows within the reach are frequently below the levels allocated under the instream water right. Thus, the instream water right would be injured as a result of the proposed change in point of diversion.
20. Instream water right Certificate 73392 is for flows to be maintained in Annie Creek from East Fork Annie Creek at River Mile 13.0 (Sec 18, T31S, R6E, W.M.) to the mouth at River Mile 0.0 (SESW, Sec. 10, T33S, R7.5E, W.M.)



21. All other application requirements are met.

### **Determination and Proposed Action**

The change in point of diversion as proposed in Transfer Application T-13618 cannot be affected without injury to instream Water Right Certificate 73392. Pursuant to ORS 540.530, the application will be denied unless, on the recommendation of the Oregon Department of Fish and Wildlife, the Department consents to injury of the instream water right, pursuant to OAR 690-380-5050, or protests are filed pursuant to OAR 690-380-4030.

*If the transfer is approved on the recommendation of the Oregon Department of Fish and Wildlife to consent to the injury, the change in subsequent use of water shall be subject to any conditions identified by Oregon Department of Fish and Wildlife as necessary to ensure that the transfer results in a net benefit to the resource, and the final order may include the following:*

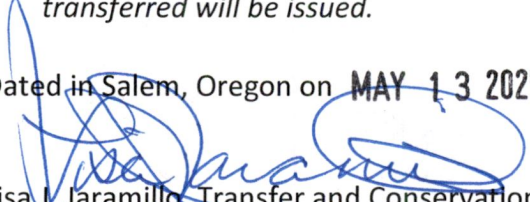
1. *The change in point of diversion proposed in Transfer Application T-13618 is approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 1091, 1094, 1104, 1107, 1108, 1109, and 1111, 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 point of diversion.*
4. *Water right Certificates 1091, 1094, 1104, 1107, 1108, 1109, and 1111 are cancelled. New certificates will be issued describing those portions of Certificates 1094, 1107, and 1108 not affected by this transfer.*
5. *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 (Stormer Ditch POD #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 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.*
7. *Prior to diverting water, the water user shall install a 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.*

8. *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.*
9. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on **MAY 13 2025**

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

This Preliminary Determination was prepared by Dante J. Luongo. If you have questions about the information in this document, you may reach me at 971-304-5006 or [dante.j.luongo@water.oregon.gov](mailto:dante.j.luongo@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](http://www.oregon.gov/owrd)

May 13, 2025

VIA CERTIFIED MAIL AND E-MAIL

TROUT UNLIMITED  
1453 ESPLANADE AVE.  
KLAMATH FALLS, OR 97601

SUBJECT: Water Right Transfer Application T-13618

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to deny application T-13618. This document is an intermediate step in the denial process; water may not be used legally as proposed in the transfer application until a Final Order approving the transfer 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 971 304-5006 or [Dante.J.Luongo@water.oregon.gov](mailto:Dante.J.Luongo@water.oregon.gov), if I may be of assistance.

Sincerely,

Dante Luongo

Transfer Specialist

Transfer and Conservation Section

cc: Transfer Application file T-13618  
Tom D. Skiles, District 17 Watermaster (*via e-mail*)  
Hollie Cannon, Agent for the applicant (*via e-mail*)