

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

In the Matter of Transfer Application	)	PROPOSED FINAL ORDER
T-14261, Harney County	)	APPROVING A CHANGE IN POINTS OF
	)	APPROPRIATION, ADDITIONAL POINTS
	)	OF APPROPRIATION, AND A CHANGE IN
		PLACE OF USE

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.

Applicant

ANDY J. ROOT
524 HWY 20 N
HINES, OR 97738

Findings of Fact

1. On June 6, 2023, Andy J. Root filed an application to change the points of appropriation, for additional points of appropriation, and to change the place of use under Certificate 97073. The Department assigned the application number T-14261.
2. Notice of the application for transfer was published on June 6, 2023, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 18, 2024, the Department contacted the Agent for the applicant regarding missing acres on the proposed lands table. On June 18, 2024, the Agent provided a revised table identifying the missing acres.

Under ORS 540.520(8) and (9) and ORS 536.077(1), any person may file a protest of this Proposed Final Order within 30 days after publication of notice of this Proposed Final Order in the Department's weekly notice. Under ORS 540.520(9) and ORS 536.077(2), if a protest is filed, any person who supports this Proposed Final Order may file a request for party status within 30 days after the deadline for filing a protest. Please refer to the end of this document for further information about filing protests and requests for party status.

4. On August 30, 2024, the Department sent a copy of the draft Preliminary Determination (further referred to as Initial Review) to the applicant, proposing to approve Transfer Application T-14261. The Initial Review cover letter provided a deadline of September 30, 2024, for the applicant to respond and submit the required information. The applicant requested that the Department proceed with issuance of a Preliminary Determination (further referred to as Proposed Final Order) and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
5. On September 3, 2024, the agent for the applicant requested the completion date of October 1, 2028, to allow extra time due to uncertainty in the basin regarding Division 512 rules.
6. Due to the process times for T-14261 the completion date of October 1, 2030, will be approved for completion of the transfer.
7. On February 24, 2026, the agent for the applicant sent revised pages removing the additional points of appropriation and clarifying the changes.
8. The right to be transferred is as follows:

Certificate: 97073 in the name of ANDY ROOT (perfected under Permit G-13645)

Use: IRRIGATION OF 488.0 ACRES

Priority Date: AUGUST 10, 1998

Rate: NOT TO EXCEED A MAXIMUM CUMULATIVE TOTAL OF 6.10 CUBIC FEET PER SECOND (CFS), BEING 1.78 FROM WELL 3, 1.45 CFS FROM WELL 4, 1.50 CFS FROM WELL 5, 1.86 CFS FROM WELL 6, AND 2.92 FROM WELL 7

Limit/Duty: The amount of water used for irrigation under this right, 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) and 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Period of Use: APRIL 1 THROUGH OCTOBER 1

Source: FIVE WELLS in the MALHEUR LAKE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	33 E	WM	9	SE SE	WELL 3 - 3690 FEET SOUTH AND 1310 FEET WEST FROM THE NE CORNER OF SECTION 9
24 S	33 E	WM	15	NE NE	WELL 4 - 1275 FEET SOUTH AND 1230 FEET WEST FROM THE NE CORNER OF SECTION 15
24 S	33 E	WM	14	SE SW	WELL 5 - 1310 FEET NORTH AND 1425 FEET EAST FROM THE SW CORNER OF SECTION 14
24 S	33 E	WM	14	SE NW	WELL 6 - 1364 FEET SOUTH AND 1410 FEET EAST FROM THE NW CORNER OF SECTION 14

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	33 E	WM	14	NE NW	WELL 7 - 30 FEET SOUTH AND 2590 FEET EAST FROM THE NW CORNER OF SECTION 14

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	33 E	WM	9	NE NE	30.5
24 S	33 E	WM	9	NW NE	30.5
24 S	33 E	WM	9	SW NE	30.5
24 S	33 E	WM	9	SE NE	30.5
24 S	33 E	WM	10	NE NE	30.5
24 S	33 E	WM	10	NW NE	30.5
24 S	33 E	WM	10	SW NE	30.5
24 S	33 E	WM	10	SE NE	30.5
24 S	33 E	WM	10	NE NW	30.5
24 S	33 E	WM	10	NW NW	30.5
24 S	33 E	WM	10	SW NW	30.5
24 S	33 E	WM	10	SE NW	30.5
24 S	33 E	WM	15	NE NW	30.5
24 S	33 E	WM	15	NW NW	30.5
24 S	33 E	WM	15	SW NW	30.5
24 S	33 E	WM	15	SE NW	30.5
Total					488.0

9. Transfer Application T-14261 proposes to move the authorized points of appropriation (POA) with approximate distances in miles from the existing points of appropriation all in miles (mi) and all north of the authorized points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from authorized POA
23 S	33 E	WM	3	NE NW	WELL #4 - 1235 FEET SOUTH AND 2420 FEET EAST FROM NW CORNER OF SECTION 3	Well 3- 7.54 mi Well 4- 7.94 mi Well 5- 8.54 mi Well 6- 7.98 mi Well 7- 7.80 mi
23 S	33 E	WM	3	NE SW	WELL #5 (A) – 2720 FEET SOUTH AND 2410 FEET EAST FROM THE NW CORNER OF SECTION 3	Well 3- 7.26 mi Well 4- 7.70 mi Well 5- 8.27 mi Well 6- 7.81 mi Well 7- 7.54 mi
23 S	33 E	WM	3	SW SW	WELL #2 – 425 FEET NORTH AND 1130 FEET EAST FROM THE SW CORNER OF SECTION 3	Well 3- 6.84 mi Well 4- 7.33 mi Well 5- 7.89 mi Well 6- 7.36 mi Well 7- 7.20 mi
23 S	33 E	WM	3	SW SE	WELL #3 – 140 FEET NORTH AND 3515 FEET EAST FROM THE SW CORNER OF SECTION 3	Well 3- 6.81 mi Well 4- 7.21 mi Well 5- 7.80 mi Well 6- 7.22 mi Well 7- 7.00 mi
24 S	33 E	WM	9	NE NE	WELL #1 (A) – 1070 FEET SOUTH AND 1030 FEET WEST FROM THE NE CORNER OF SECTION 9	Well 3- 6.51 mi Well 4- 7.07 mi Well 5- 7.67 mi Well 6- 7.18 mi

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from authorized POA
						Well 7- 6.97 mi
24 S	33 E	WM	14	SE SW	WELL #5 (B) – 1315 FEET NORTH AND 1445 FEET EAST FROM THE SW CORNER OF SECTION 14	Well 3- 5.20 mi Well 4- 5.47 mi Well 5- 5.94 mi Well 6- 5.44 mi Well 7- 5.24 mi
22 S	33 E	WM	34	SE SW	WELL #1 (B) – 500 FEET NORTH AND 2320 FEET EAST FROM THE SW CORNER OF SECTION 34	Well 3- 1.94 mi Well 4- 2.33 mi Well 5- 2.94 mi Well 6- 2.47 mi Well 7- 2.30 mi

10. To avoid confusion, where the applicant has chosen to label the wells with same names, the Department has assigned a letter, as seen in the above table in parentheses.
11. Transfer Application T-14261 also proposes to change the place of use (POU) of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	G-Lot	Acres
22 S	33 E	WM	34	NW NE		6.4
22 S	33 E	WM	34	SW NE		8.3
22 S	33 E	WM	34	NE NW		10.9
22 S	33 E	WM	34	SE NW		12.4
22 S	33 E	WM	34	NE SW		7.0
22 S	33 E	WM	34	NW SW		8.0
22 S	33 E	WM	34	SW SW		9.4
22 S	33 E	WM	34	SE SW		8.0
23 S	33 E	WM	3	NE NW	3	6.3
23 S	33 E	WM	3	NW NW	4	6.2
23 S	33 E	WM	3	SW NW		10.1
23 S	33 E	WM	3	SE NW		8.5
23 S	33 E	WM	3	NE SW		5.8
23 S	33 E	WM	3	NW SW		5.8
23 S	33 E	WM	3	SW SW		4.9
23 S	33 E	WM	3	SE SW		4.0
24 S	33 E	WM	9	NE NE		30.5
24 S	33 E	WM	9	NW NE		30.5
24 S	33 E	WM	9	SW NE		30.5
24 S	33 E	WM	9	SE NE		30.5
24 S	33 E	WM	10	NE NW		30.5
24 S	33 E	WM	10	NW NW		30.5
24 S	33 E	WM	10	SW NW		30.5
24 S	33 E	WM	10	SE NW		30.5
24 S	33 E	WM	15	NE NW		30.5
24 S	33 E	WM	15	NW NW		30.5
24 S	33 E	WM	15	SW NW		30.5
24 S	33 E	WM	15	SE NW		30.5

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	G-Lot	Acres
Total						488.0

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

9. 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.
10. 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-14261.
11. The water right is subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
12. The proposed points of appropriation develop groundwater from the same aquifer as the authorized points of appropriation, as required by OAR 690-380-2110(2).
13. The proposed changes, as conditioned, would not result in enlargement of the right.
14. The proposed change, as conditioned, would not result in injury to other existing water rights.
15. All other application requirements are met.

Determination and Proposed Action

The change in points of appropriation, additional points of appropriation, and change in place of use proposed in Transfer Application T-14261 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

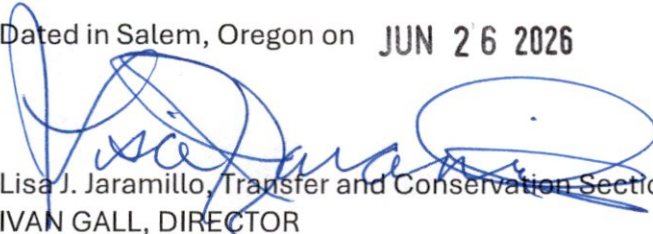
If Transfer Application T-14261 is approved, the final order will include the following:

1. *The change in points of appropriation, additional points of appropriation, and change in place of use proposed in Transfer Application T-14261 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 Certificate 97073 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 appropriation and the new place of use.*
4. *Water right Certificate 97073 is cancelled.*
5. *The quantity of water diverted at the new points of appropriation (Wells 1 (A), 1 (B), 2, 3, 4, 5 (A), and 5 (B)) shall not exceed the quantity of water lawfully available at the original points of appropriation (Wells 3, 4, 5, 6, and 7).*
6. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
7. *The former place of use of the transferred right shall no longer receive water under the right.*
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 appropriation.*
 - 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. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2030**. 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.*

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

Dated in Salem, Oregon on JUN 26 2026



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

This Proposed Final Order was prepared by Joan Smith. If you have questions about the information in this document, you may reach me at 503-986-0892 or Joan.M.Smith@water.oregon.gov

Pursuant to ORS 536.077(4) and (5), if no protest of this Proposed Final Order is received by July 30, 2026, and the Department does not withdraw this Proposed Final Order on or before July 30, 2026, this Proposed Final Order is a final order without any further action by the Department on August 31, 2026.

Protests and Requests for Party Status

The following sections explain how to: (1) file a protest in opposition to this Proposed Final Order to request a contested case hearing on this Proposed Final Order; and (2) file a request for party status to request to participate in any contested case proceeding in support of this Proposed Final Order.

Protests: Under the provisions of ORS 540.520(8) and (9) and ORS 536.077(1), any person may protest this Proposed Final Order. Protests may be mailed or hand delivered to the Oregon Water Resources Department at 725 Summer Street NE, Suite A, Salem, OR 97301. If you submit a protest by U.S. mail, please consider mailing early to ensure the Department receives the protest by the deadline. Protests may be emailed to will.d.davidson@water.oregon.gov, but payment of Protest fees cannot be accepted electronically and must be received by the Department by mail or hand delivery prior to the deadline. Protests and protest fees must be received by the Water Resources Department no later than **July 30, 2026**.

Protests must meet the following requirements:

- Be in writing;
- Include the protestant's name, address, telephone number, and email address, if the protestant has an email address;

- Include the name, address, telephone number, and email address of the protestant's attorney, if the protestant is represented by an attorney;
- Include a description of the protestant's interest in the Proposed Final Order, and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;
- Include a detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to the protestant's interest and/or the claimed public interest;
- Identify which of the Proposed Final Order's recommended findings of fact, conclusions of law or conditions of approval the protestant objects to;
- Raise all reasonably ascertainable issues and include all reasonably available arguments that support the protestant's position;
- Include any citation of legal authority to support the protest, if known;
- Explain how the issues raised in the protest are within the Department's jurisdiction;
- If the protestant is the applicant, include a protest fee of \$720 required by ORS 536.050; and
- If the protestant is not the applicant, include a protest fee of \$1,425 required by ORS 536.050.

Requests for Party Status: Under the provisions of ORS 540.520(9) and ORS 536.077(2), if this Proposed Final Order is protested, any person who supports this Proposed Final Order may file a request for party status to request to participate in any contested case proceeding on the Proposed Final Order or for judicial review of a final order resulting from the Proposed Final Order. There is no need for the applicant to file a request for party status. The applicant will automatically be a party to any contested case proceeding on this Proposed Final Order. Requests for party status may be mailed or hand delivered to the Oregon Water Resources Department at 725 Summer Street NE, Suite A, Salem, OR 97301. If you submit a request for party status by U.S. mail, please consider mailing early to ensure the Department receives the request by the deadline. Requests for party status may be emailed to will.d.davidson@water.oregon.gov, but payment of request for party status fees cannot be accepted electronically and must be received by the Department by mail or hand delivery prior to the deadline. Requests for party status and request for party status fees must be received by the Water Resources Department no later than August 31, 2026.

Requests for party status must be in writing and include the following:

- Names, addresses, and email addresses (if any) of the requester and any organization the requester represents;
- Name, address, and email address of the requestor's attorney, if any;

- A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;
- If the requestor seeks to protect a personal interest in the outcome of any contested case hearing on the Proposed Final Order, a detailed statement of the requestor's interest, economic or otherwise, and how such interest may be affected by the results of the hearing;
- If the requestor seeks to represent a public interest in the results of any contested case hearing on the Proposed Final Order, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the hearing, and the requestor's qualifications to represent such public interest;
- A statement of the reasons why existing parties to the proceeding cannot adequately represent the private and/or public interest(s) the requestor seeks to represent; and
- The request for party status fee of \$1,425 required by ORS 536.077(2)(b)(C) and ORS 536.050.

After the deadline for requests for party status, the Department will provide copies of any timely requests for party status, accept responses to requests for party status, and consider and rule on timely requests for party status as provided in OAR 690-002-0225.

Additional Notices

Notice of requirement to provide updated contact information: Parties must timely provide the Department with updated contact information, including any change of address or primary means of electronic communication. The contact information provided in the protest or request for party status, as applicable, is presumed to be valid for the purposes of service and notification of upcoming referral to the Office of Administrative Hearings unless timely updated by the party. OAR 690-002-0081.

Notice of the circumstances under which this Proposed Final Order will become a final order: If no protest of this Proposed Final Order is timely received and the Department does not withdraw this Proposed Final Order for reconsideration within 33 days after the close of the period for submitting a protest, this Proposed Final Order will become a final order on the date that is 33 days after the close of the period for submitting a protest, with no further action required by the Department. If a protest or protests are timely received, but later: (1) all timely-filed protests are withdrawn and the withdrawals are not based on a settlement agreement requiring changes to this Proposed Final Order; (2) all protestants fail to appear at a scheduled hearing; or (3) all protestants notify the Department or the administrative law judge that the protestants will not appear at a scheduled hearing, the protestants will have waived any right to a hearing, and the Department or the administrative law judge will issue an order dismissing the protests and notifying the parties that this Proposed Final Order has become a final order. OAR 690-002-

0235; OAR 137-003-0672. The Department designates the relevant portions of its file on this matter, including all materials that you have submitted relating to this matter, as the record for the purpose of proving a prima facie case upon default. OAR 137-003-0672.

Notice of Right to Pursue Approval of Transfer through Consent to Injury Process after Contested Case Hearing: If after a contested case hearing on this Proposed Final Order the Department issues a proposed 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 OAR 690-002-0175, if the applicant files a notification of intent to pursue approval of the transfer under OAR 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 OAR 690-380-5030 to 690-380-5050.

Notice of right to be represented by an attorney: You may be represented by an attorney at any contested case hearing on this Proposed Final Order. 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 137-003-0555, an “authorized representative” as defined at OAR 137-003-0555(1)(b) may represent a partnership, corporation, association, governmental subdivision or public or private organization 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 to active duty servicemembers: Active-duty service members have a right to stay proceedings under the federal Service Members 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 a request for party status, or if you have previously filed a protest or a request for party status 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 26, 2026

VIA CERTIFIED MAIL AND E-MAIL

ANDY ROOT
524 HWY 20 N
HINES, OR 97738

SUBJECT: Water Right Transfer Application T-14261

Please find enclosed the Proposed Final Order indicating that, based on the information available, the Department intends to approve application T-14261. 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 Burns Times Herald newspaper, simultaneously with issuance of the Proposed Final Order. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Proposed Final Order or a request for party status supporting the Department's decision. The protest period will end 30 days after the Department's notice.

The Proposed Final Order will become a Final Order 33 days after the protest period ends without any further action by the Department, as a matter of law, if no protest is filed.

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 Proposed Final Order to present information and arguments supporting their position in a quasi-judicial proceeding.

Please don't hesitate to contact me at 503-986-0892 or Joan.M.Smith@water.oregon.gov, if I may be of assistance.

Sincerely,

Joan Smith
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-14261
Donald (dally) S. Swindlehurst, District 10 Watermaster (*via e-mail*)
Scott D. Montgomery, Agent for the applicant (*via e-mail*)

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