

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

In the Matter of Transfer Application	)	PROPOSED FINAL ORDER APPROVING
T-13752, Marion County	)	OF A CHANGE IN POINT OF
	)	APPROPRIATION

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

MARK MCKAY
5057 BROOKLAKE RD NE
SALEM, OR 97305

Findings of Fact

1. On June 28, 2021, Mark McKay filed an application to change the point of appropriation under Certificate 51040. The Department assigned the application number T-13752.
2. Notice of the application for transfer was published on July 13, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 23, 2026, 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-13752. The Initial Review cover letter provided a deadline of May 25, 2026, 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.

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

Certificate: 51040 in the name of RICHARD SCHWEINFURTH (perfected under Permit G-6905)
Use: IRRIGATION OF 18.5 ACRES
Priority Date: JUNE 25, 1976
Rate: 0.23 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.
Source: A WELL, a tributary of WILLAMETTE RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
5 S	2 W	WM	33	NW SW	8	1090 FEET SOUTH AND 1040 FEET WEST FROM THE SW CORNER OF LARKIN DLC 84

Authorized Place of Use:

IRRIGATION – JUNE 25, 1976 PRIORITY						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
5 S	2 W	WM	33	NW SW	8	14.0
5 S	2 W	WM	33	SW SW	9	4.5
Total						18.5

5. Transfer Application T-13752 proposes to move the authorized point of appropriation approximately 0.44 mile southwest from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
5 S	2 W	WM	32	SE SE	1	WELL 3 - 15 FEET SOUTH AND 60 FEET WEST FROM THE NW CORNER OF DOUGHERTY DLC 101

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

6. Water has been used within the last five years prior to submittal of Transfer Application T-13752 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.
7. 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-13752.

8. The water right is subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
9. 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).
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other existing water rights.
12. All other application requirements are met.

Determination and Proposed Action

The change in point of appropriation proposed in Transfer Application T-13752 appears 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-13752 is approved, the final order will include the following:

1. *The change in point of appropriation proposed in Transfer Application T-13752 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 Certificate 51040 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 appropriation.*
4. *Water right Certificate 51040 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
5. *The quantity of water diverted at the new point of appropriation (Well 3) shall not exceed the quantity of water lawfully available at the original point of appropriation (Well).*
6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2027**. 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.*

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

Dated in Salem, Oregon on 7/10/2026



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

This Proposed Final Order was prepared by Corey Courchane. If you have questions regarding the content of this document, you may contact me at 503-979-3917 or corey.a.courchane@water.oregon.gov.

Pursuant to ORS 536.077(4) and (5), if no protest of this Proposed Final Order is received by August 13, 2026, and the Department does not withdraw this Proposed Final Order on or before September 15, 2026, this Proposed Final Order is a final order without any further action by the Department on September 15, 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 **August 13, 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 **September 14, 2026**.

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

- Names, addresses, and email addresses (if any) of the requestor and any organization the requestor 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

July 10, 2026

VIA CERTIFIED MAIL AND E-MAIL

MARK MCKAY
5057 BROOKLAKE RD NE
SALEM, OR 97305

SUBJECT: Water Right Transfer Application T-13752

Please find enclosed the Proposed Final Order indicating that, based on the information available, the Department intends to approve application T-13752. 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 Woodburn Independent 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 do not hesitate to contact me, at corey.a.courchane@water.oregon.gov or (503) 979-3917, if I may be of assistance.

Sincerely,

Corey Courchane
Allocation of Conserved Water
Transfer and Conservation Section

cc: Transfer Application file T-13752
Gregory J. Wacker, District 16 Watermaster (*via e-mail*)
Jeanne Boatwright, Agent for the applicant (*via e-mail*)

encs