

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

In the Matter of Transfer Application	)	PROPOSED FINAL ORDER DENYING
T-11923, Lake County	)	A CHANGE IN POINT OF DIVERSION
	)	AND A CHANGE IN PLACE OF USE

Authority

Oregon Revised Statute (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 Rule (OAR) Chapter 690, Division 380 implements 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 request voluntary cancellation.

Applicant

WILLIAM AND JEREMIAH BARRY
97099 CRANE CREEK LANE
LAKEVIEW, OR 97630

Findings of Fact

1. On November 17, 2014, William D. and Jeremiah P. Barry, filed an application to change the point of diversion and to change the place of use under Certificate 7470. The Department assigned the application number T-11923.
2. Notice of the application for transfer was published on November 25, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

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.

3. The Department identified Certificate 7470 is layered with portions of Certificates 5358, 7456 and 97554. Pursuant to OAR 690-380-2240(1), a change in place of use or character of use of a water use subject to transfer, a permit, or a certificate of registration that is layered shall be approved or recognized only if concurrent changes to the other layered water uses subject to transfer, permits, and certificates of registration are approved or recognized. The acres under Certificate 7470 proposed for transfer that are layered with Certificates 5358, 7456 and 97554 are described in the table below:

IRRIGATION							
Twsp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Layered Certificates
39 S	20 E	WM	28	SW NE	5100	40.0	5358, 7456, and 97554
39 S	20 E	WM	27	NW NW	5100	13.8	97554
39 S	20 E	WM	27	SW NW	5100	25.3	97554
Total						79.1	

4. The Department determined that Certificate 7470 was issued in 1927, 87 years before the filing of Transfer Application T-11923 and that this supporting documentation is not satisfactory to prove Evidence of Use. The Watermaster Review also indicates, “in talks with the Town of Lakeview and the applicant, the Town of Lakeview has not delivered water to the “from” land via Sewer Creek for at least 15 years.”
5. On December 9, 2015, the Department requested additional supporting documentation be submitted, and the deficiencies be resolved by January 8, 2016. Neither the applicant nor the applicant’s agent responded to this request.
6. On December 9, 2015, pursuant to OAR 690-380-2240, the Department notified the applicant via regular mail and the applicant’s agent via email of the layered Certificates described in Findings of Fact (FOF) No. 3 and requested the applicant submit an amended application and map to include Certificates 5358, 7456, and 97554 along with any additional fees, or provide voluntary cancellation affidavits for each Certificate to cancel the layered portions of the Certificates. The letter also identified a deficiency in the Evidence of Use Affidavit submitted with Transfer Application T-11923. The Evidence of Use Affidavit states water was applied during the previous five years under Certificate 7470 on the entire place of use and the supporting documentation provided was a copy of a Confirming Water Right Certificate (Certificate 7470) issued by the Department within the previous five years before Transfer Application T-11923 was filed.
7. On February 3, 2016, the Department notified the applicant via mail and the applicant’s agent via email regarding the deficiencies described in FOF Nos. 3 and 4. The Department requested that the deficiencies be resolved by March 4, 2016.
8. On March 10, 2016, the Department received a response letter from the applicant addressing the Evidence of Use deficiency identified in FOF No. 4 only, however the information provided does not satisfy this deficiency.
9. On July 2, 2024, the Department sent a copy of the Draft Preliminary Determination (DPD) to the applicants, proposing to deny Transfer Application T-11923. The DPD cover letter provided a deadline of August 2, 2024, for the applicants to respond.

10. On July 29, 2024, the Department spoke with the applicant's agent by phone and extended the deadline for response to August 30, 2024.
11. On August 26, 27, and 28, 2024, the applicant's agent submitted a revised map, revised application pages, an affidavit of cancellation for a portion of the acres layered under Certificate 97554 and an affidavit of diminution for a portion of Certificate 4740, not proposed Certificate 7470.
12. The Department determined that the layering deficiency has not been overcome as the applicant did not address, nor include in the application, the additional layered Certificates 5358 or 7456 or provide cancellation affidavits for the 40.0-acre portion located in Section 28, T39S, R20E, WM in the SW NE quarter-quarter under Certificates 5358, 7456, or 97554. Transfer Application T-11923 is still considered incomplete and is denied.
13. On October 24, 2024, the applicant's agent provided the Report of Ownership Information.
14. The right to be transferred is as follows:

Certificate: 7470 in the name of M. P. J. BARRY (perfected under Permit S-7741)
Use: IRRIGATION of 39.1 ACRES and SUPPLEMENTAL IRRIGATION of 40.0 ACRES
Priority Date: DECEMBER 2, 1926
Rate: 1.0 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 in case of rotation.
Source: EFFLUENT of the CITY OF LAKEVIEW'S SEPTIC TANK

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	20 E	WM	27	NW NW	13.8
39 S	20 E	WM	27	SW NW	25.3
Total					39.1

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	20 E	WM	28	SW NE	40.0

15. Certificate 7470 does not describe the location of the point of diversion, however information is available from the applicant indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	20 E	WM	16	SE NE	POD #1 - 2811.04 FEET NORTH AND 1283.30 FEET WEST FROM SE CORNER, SECTION 16

16. Transfer Application T-11923 proposes to move the authorized point of diversion to a location described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Authorized POD
39 S	20 E	WM	20	NE NE	POD #2 – 69.72 FEET SOUTH AND 271.74 FEET WEST FROM NE CORNER, SECTION 20	0.96 Mile Downstream

17. Transfer Application T-11923 proposes to diminish 39.1 acres of Primary Irrigation to Supplemental Irrigation, however, the applicant provided an Affidavit for Partial Diminution of Certificate 4740. The Certificate proposed for diminution under T-11923 is Certificate 7470.

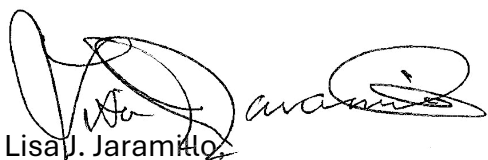
Transfer Review Criteria [OAR 690-300-0010(58), 690-380-4010(2), 690-380-2200 and 690-380-2110(2)]

18. Evidence was submitted with the application indicating that water has been used within the last five years according to the terms and conditions of the right. Information provided by the Watermaster indicates that it is unclear if there have been extended periods of time during which the right was not exercised. However, the information in the record is not sufficient to initiate cancellation proceedings under ORS 540.631.
19. The applicant indicated 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-11923.
20. The water right is subject to transfer as defined in ORS 540.505(4) and OAR 690-300-0010(58).
21. 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).
22. The proposed changes, as conditioned, would result in enlargement of the right because: Certificate 7470 is layered with portions of Certificates 5358 and 7456. The applicant has not amended Transfer Application T-11923 to include Certificates 5358 and 7456 or provided affidavits of cancellations for Certificates 5358 and 7456.
23. The proposed changes, as conditioned, would not result in injury to other existing water rights.
24. The application is incomplete because of the deficiencies described in FOF Nos.3, 4, 17 and 22. Therefore, all other application requirements are not met.

Determination and Proposed Action

The change in point of diversion and change in place of use proposed in Transfer Application T-11923 appear to be not consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be denied.

Dated in Salem, Oregon on 10/1/2026



Lisa J. Jaramillo
Transfer and Conservation Section Manager, for
Ivan Gall, Director
Oregon Water Resources Department

This Proposed Final Order was prepared by Arla Davis. If you have questions about the information in this document, you may reach me at 503-979-3129 or arla.l.davis@water.oregon.gov

Pursuant to ORS 536.077(4) and (5), if no protest of this Proposed Final Order is received by 11/5/2026, and the Department does not withdraw this Proposed Final Order on or before 12/8/2026, this Proposed Final Order is a final order without any further action by the Department on 12/8/2026.

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.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 11/5/2026.

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 12/7/2026.

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

October 1, 2026

VIA CERTIFIED MAIL AND E-MAIL

WILLIAM BARRY
97099 CRANE CREEK RD
LAKEVIEW, OR 97630

SUBJECT: Water Right Transfer Application T-11923

Please find enclosed the Proposed Final Order indicating that, based on the information available, the Department intends to deny application T-11923. 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 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 503-979-3129 or Arla.L.Davis@water.oregon.gov if I may be of assistance.

Sincerely,

Arla L. Davis

Arla L. Davis

Transfer Specialist

Transfer and Conservation Section

cc: Transfer Application file T-11923
Matt A. Anderson, District 12 Watermaster (*via e-mail*)
Anderson Engineering And Surveying Inc., Agent for the applicant (*via e-mail*)

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