

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING AN
T-13513, Baker County	)	ADDITIONAL POINT OF DIVERSION TO
	)	REFLECT HISTORIC USE AND PARTIAL
	)	CANCELLATION OF A WATER RIGHT
	)	CERTIFICATE

**Authority**

ORS 540.532 establishes the process in which a water right holder may submit a request for a change in point of diversion to reflect historical use under an existing water right. OAR Chapter 690-380-2120 implements the statute and provides the Department's procedures and criteria for evaluating historic point of diversion/appropriation 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**

ARLENE M. DETHLOFF  
8855 SW 82ND  
PORTLAND, OR 97223

**Findings of Fact**

1. On September 2, 2020, ARLENE M. DETHLOFF filed a transfer application for authorization of an historic point of diversion under Certificate 68433. The Department assigned the application number T-13513.
2. Notice of the application for transfer was published on September 8, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

3. On March 1, 2021, the Department contacted the applicant by written correspondence to notify the applicant of a deficiency in the application. The Evidence of Use supporting documentation submitted with the application, being a Google Earth Image, identified some physical features that were not identified on the application map. The physical features were also in place for the previous five years prior to submitting T-13513, making those portions of the place of use not subject to transfer. The Department requested that the deficiencies be resolved by March 30, 2021.

4. On March 29, 2021, the Department received an Affidavit for the Voluntary Cancellation of a Portion of Water Right Certificate 68433 and map, resolving the deficiency.

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

**Certificate:** 68433 in the name of H. K. FISHER (confirmed by POWDER RIVER Decree)  
**Use:** IRRIGATION of 159.68 ACRES  
**Priority Date:** 1872 FOR 159.68 ACRES  
**Rate:** 1/40 CUBIC FOOT PER SECOND PER ACRE  
**Source:** ROCK CREEK, a tributary of the POWDER RIVER

**Authorized Point of Diversion:**

H. K. FISHER AND A. LONG DITCHES FOR 159.68 ACRES
---

**Authorized Place of Use:**

IRRIGATION - 1872					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	38 E	WM	26	SW NW	39.68
7 S	38 E	WM	26	SE NW	40.00
7 S	38 E	WM	26	NE SW	40.00
7 S	38 E	WM	26	NW SW	40.00
Total					159.68

6. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 68433 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	34	SW NE	FISHER LONG DITCH - 2500 FEET SOUTH AND 2100 FEET WEST FROM THE NE CORNER OF SECTION 34

7. Transfer Application T-13513 proposes an additional point of diversion approximately 0.2 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	34	NE SW	ROCK CREEK PIPELINE - 3040 FEET SOUTH AND 3102 FEET WEST FROM THE NE CORNER OF SECTION 34

8. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

***Transfer Review Criteria (ORS 540.532 and OAR 690-380-2120)***

9. Pursuant to OAR 690-380-2120(2)(a), evidence has been submitted that the actual, current point of diversion for the water right in question, as described in Finding No. 7, has been in use for more than 10 years.
10. Pursuant to OAR 690-380-2120(2)(c), the Watermaster provided a statement that to her knowledge there has been no complaint of injury due to the use of water at the actual, current point of diversion, prior to the transfer request.
11. Pursuant to OAR 690-380-2120(3), the Department provided the applicant a list of the affected water rights and a copy of the notice to be provided to each affected water right holder. The applicant has provided written proof of service of notice of the proposed transfer on all affected water right holders.
12. Water has been used within the last five years according to the terms and conditions of the right. There is no evidence available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
13. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.

***Partial Cancellation of a Water Right***

16. On March 29, 2021, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Dave and Theresa Schierman, Representatives of the Arlene Dethloff Estate. The right to be cancelled is as follows:

**Certificate:** 68433 in the name of H. K. FISHER (confirmed by POWDER RIVER Decree)

**Use:** IRRIGATION of 0.32 ACRE

**Priority Date:** 1872 FOR 0.32 ACRE

**Rate:** 1/40 CUBIC FOOT PER SECOND PER ACRE

**Source:** ROCK CREEK, a tributary of the POWDER RIVER

**Authorized Points of Diversion:**

H. K. FISHER AND A. LONG DITCHES FOR 0.32 ACRE

**Authorized Place of Use:**

IRRIGATION - 1872					
Twp	Rng	Mer	Sec	Q - Q	Acres
7 S	38 E	WM	26	SW NW	0.32

**Conclusions of Law**

The proposed additional point of diversion to reflect historical use in application T-13513 is consistent with the requirements of ORS 540.532, and OAR 690-380-2120 and the abandoned right should be cancelled.

**Now, therefore, it is ORDERED:**

1. The change proposed in T-13513 is approved and effective immediately. The portion of the right that has been abandoned is 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 68433 and any related decree.
3. Water right certificate 6843368433 is cancelled. Certificate 95712 will be issued to describe the additional point of diversion for the portion of the right included in T-13513. Certificate 95713 shall be issued to describe the portion of Certificate 68433 not modified by this order and cancellation. Together, the new Certificates shall supersede Certificate 68433.
4. The quantity of water diverted at the additional point of diversion (Rock Creek Pipeline), together with that diverted at the old point of diversion (Fisher Long Ditch), shall not exceed the quantity of water lawfully available at the original point of diversion (Fisher Long Ditch).

5. Prior to October 1, 2022, Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards..

Dated in Salem, Oregon on **JUN 30 2021**



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
THOMAS M BYLER, DIRECTOR  
Oregon Water Resources Department

*Mailing date:*

**JUN 30 2021**