



6. On June 23, 2020, the Department issued a Preliminary Determination proposing to approve Transfer T-13227 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on June 30, 2020, and in the East Oregonian newspaper on June 30 and July 7, 2020, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

**Certificate:** 2488 in the name of DOUGLAS BELTS (confirmed by Umatilla River decree)  
**Use:** IRRIGATION of 9.3 ACRES, DOMESTIC and STOCK USE  
**Priority Date:** 1878 for Tract No.1  
**Rate/Limit:** 0.1145 CUBIC FOOT PER SECOND (cfs), subject to the provisions of paragraph 33 of said decree and all other conditions and limitations contained in said decree  
**Source:** EAST and WEST BIRCH CREEKS, tributary of the UMATILLA RIVER\*

**Authorized Place of Use:**

| IRRIGATION, DOMESTIC AND STOCK USE |      |     |     |       |       |
|------------------------------------|------|-----|-----|-------|-------|
| Twp                                | Rng  | Mer | Sec | Q - Q | Acres |
| 2 S                                | 32 E | WM  | 11  | SE SW | 9.3   |

8. The Department has determined that the water use subject to transfer, Certificate 2488, inadvertently has identified West and East Birch Creeks as tributaries to the Umatilla River\*, when in fact, it is clearly Birch Creek that is the source of water these creeks, at their confluence create. Thus, the record should establish that West and East Birch Creeks are tributaries to Birch Creek, which, in turn is tributary to the Umatilla River.

9. Certificate 2488 does not describe the location of the point of diversion from East Birch Creek for the water use. Information is available however from the Department's adjudication map and the current map prepared by the applicant's Certified Water Rights Examiner based on a recent field visit and subsequent survey indicating that the point of diversion on the East Birch Creek is located as follows:

| Twp | Rng  | Mer | Sec | Q - Q | Measured Distances  |
|-----|------|-----|-----|-------|---|
| 2 S | 32 E | WM  | 11  | SE SE | POD #1 - 780 FEET NORTH AND 3977 FEET EAST FROM THE SW CORNER OF SECTION 11 |

10. Transfer Application T-13227 proposes to change the point of diversion downstream approximately 0.5 mile from the authorized point of diversion to:

| Twp | Rng  | Mer | Sec | Q - Q | Measured Distances   |
|-----|------|-----|-----|-------|--|
| 2 S | 32 E | WM  | 11  | SE SW | POD #3 - 1190 FEET NORTH AND 1540 FEET EAST FROM THE SW CORNER OF SECTION 11 |



11. Transfer Application T-13227 also proposes to change the place of use of the above described right to:

| IRRIGATION, DOMESTIC AND STOCK USE |      |     |     |       |       |
|------------------------------------|------|-----|-----|-------|-------|
| Twp                                | Rng  | Mer | Sec | Q - Q | Acres |
| 2 S                                | 32 E | WM  | 11  | NW SW | 0.25  |
| 2 S                                | 32 E | WM  | 11  | SW SW | 8.00  |
| 2 S                                | 32 E | WM  | 11  | SE SW | 1.05  |
| Total:                             |      |     |     |       | 9.30  |

12. 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 690-380-4010(2)]***

13. 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.
14. A diversion structure and ditch 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-13227.
15. The proposed changes would not result in enlargement of the right.
16. The proposed changes would not result in injury to other water rights.
17. All other application requirements are met.

**Conclusions of Law**

The changes in place of use and point of diversion proposed in Transfer Application T-13227 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

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

1. The changes in place of use and point of diversion proposed in Transfer Application T-13227 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 2488 and any related decree.
3. Water right Certificate 2488 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. The quantity of water diverted at the new point of diversion (POD #3), shall not exceed the quantity of water lawfully available at the original point of diversion (POD #1).

5. 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 new point of diversion.
  - b. The water user shall maintain the meter or measuring device in good working order.
  - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device are located within a private structure, the Watermaster shall request access upon reasonable notice.
6. Prior to diverting water, the water user shall install an approved 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.
7. The former place of use of the transferred right shall no longer receive water under the right.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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.
9. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

**SEP 02 2020**

Dated at Salem, Oregon this \_\_\_\_\_,

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

Mailing date: SEP 03 2020