

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-13472, Baker County) A CHANGE IN POINTS OF DIVERSION

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, 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

FAREWELL BEND STATE PARK
23751 OLD HWY 30
HUNTINGTON, OR 97907

Findings of Fact

1. On June 15, 2020, FAREWELL BEND STATE PARK filed an application to change the points of diversion (POD) under Certificates 82743 and 91865. The Department assigned the application number T-13472.
2. Notice of the application for transfer was published on June 30, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 13, 2021, the Department determined that Certificate 82743 does not need to be included in the application. The application is requesting to change the POD from POD 1 and POD 2 to POD 3, however, Certificate 82743 already authorizes POD 3. Therefore, Certificate 82743 is removed from the application, and the Department is proceeding with the change in POD under Certificate 91865.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, 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.

4. On August 12, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13472 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 13, 2021, for the applicant to respond.
5. On September 13, 2021, Kirk Barham, Park Manager Farewell Bend Management Unit, contacted the Department. The required report of ownership from a title company would not be received in time, and a new deadline to receive the report was requested. The Department set forth a deadline of October 29, 2021.
6. On November 5, 2021, the applicant contacted the Department for another deadline extension on receiving the title report. The Department set forth a deadline of November 30, 2021.
7. On December 7, 2021, the Department contacted the applicant and set forth a deadline of February 14, 2022, or a Preliminary Determination shall be issued denying the application as incomplete.
8. On February 10, 2022, the applicant corresponded with the Department by telephone, to discuss proceeding with T-13472. It was determined the initial application was not submitted as the applicant intended. The change in POD requested under Certificate 82743 was to be from POD 2 to POD 1, not from POD 1 to POD 3. The Department determined revisions would need to be submitted, as Certificate 82743 is included in T-13472.
9. On February 18, 2022, the Department received a revised Table 1 and Table 2 for Certificates 82743 and 91865, resolving the discrepancy. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
10. On March 24, 2022, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-13472 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of April 25, 2022, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.
11. On August 30, 2022, the Department issued a Preliminary Determination proposing to approve Transfer T-13472 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 August 30, 2022, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

12. The first right to be transferred is as follows:

Certificate: 82743 in the name of OREGON STATE PARKS AND RECREATION
(perfected under Permit S-26100)

Use: IRRIGATION of 13.3 ACRES

Priority Date: APRIL 1, 1959

Rate: 0.15 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, is limited to a diversion of ONE-FORTIETH 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 4 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: SNAKE RIVER, tributary to COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
14 S	45 E	WM	33	NW SW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	45 E	WM	32	SE SE	4.0
14 S	45 E	WM	33	NW SW	3.1
14 S	45 E	WM	33	SW SW	6.2

13. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 82743 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	45 E	WM	33	NW SW	POD #2 - 1130 FEET SOUTH AND 760 FEET EAST FROM THE 1/4 CORNER BETWEEN SECTIONS 32 AND 33

14. Transfer Application T-13472 proposes to move the authorized point of diversion approximately 1255 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	45 E	WM	33	NE SW	POD #1 - 160 FEET SOUTH AND 1810 FEET EAST FROM THE 1/4 CORNER BETWEEN SECTIONS 32 AND 33

15. The second right to be transferred is as follows:

Certificate: 91865 in the name of OREGON PARKS AND RECREATION DEPARTMENT
(perfected under Permit S-31231)

Use: IRRIGATION of 42.6 ACRES

Priority Date: JUNE 27, 1966

Rate: 0.92 CUBIC FOOT PER SECOND (CFS), further limited to 0.33 CFS FROM POD 1 AND 0.67 CFS FROM POD 2

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-FORTIETH 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 4.0 acre-feet for each acre irrigated during the irrigation season of each year.

Source: SNAKE RIVER, tributary to COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
14 S	45 E	WM	33	NW SW	4	POD 2 - 1130 FEET SOUTH AND 760 FEET EAST FROM THE W1/4 CORNER OF SECTION 33.

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
14 S	45 E	WM	32	NE SE		6.4
14 S	45 E	WM	32	SE SE		0.5
14 S	45 E	WM	33	SW NW		2.6
14 S	45 E	WM	33	SE NW	3	4.5
14 S	45 E	WM	33	NE SW	4	1.1
14 S	45 E	WM	33	NW SW	4	25.8
14 S	45 E	WM	33	SW SW	5	1.7
Total						42.6

16. Transfer Application T-13472 proposes to move the authorized point of diversion approximately 890 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	45 E	WM	33	SW SW	POD #3 - 1920 FEET SOUTH AND 190 FEET EAST FROM THE 1/4 CORNER BETWEEN SECTIONS 32 AND 33

17. 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 currently equipped with an appropriate fish screening and/or by-pass device.

Transfer Review Criteria [OAR 690-380-4010(2)]

18. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

19. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-13472.

20. The proposed changes would not result in enlargement of the right.
21. The proposed changes would not result in injury to other water rights.
22. All other application requirements are met.

Conclusions of Law

The changes in points of diversion proposed in Transfer Application T-13472 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in points of diversion proposed in Transfer Application T-13472 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 Certificates 82743 and 91865 and any related decree.
3. Water right Certificates 82743 and 91865 are cancelled.
4. Under Certificate 82743, the quantity of water diverted at the new point of diversion (POD 1), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 2).
5. Under Certificate 91865, 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 2).
6. 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 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.
7. The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.

8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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.
9. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on

NOV 28 2022



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR
Oregon Water Resources Department

Mailing date: NOV 29 2022