

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

In the Matter of Transfer Application                    )     FINAL ORDER APPROVING OF A  
T-13151, Clackamas County                            )     CHANGE IN POINT 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**

WARREN H. AND BERNICE S. BEAN  
12909 SE 68TH PARKWAY STE 430  
TIGARD, OR 97223

**Findings of Fact**

1. On March 12, 2019, WARREN H. and BERNICE S. BEAN filed an application to change the point of diversion under Certificates 90218 and 94129. The Department assigned the application number T-13151.
2. Notice of the application for transfer was published on March 19, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 9, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13151 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 10, 2020, for the applicants to respond. The applicants 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.
4. On June 30, 2020, the Department issued a Preliminary Determination proposing to approve Transfer T-13151 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, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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.

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

**Certificate:** 90218 in the name of JOEL NEUSCHWANDER AND WARREN H. BEAN (perfected under Permit S-11196)  
**Use:** IRRIGATION of 9.7 ACRES  
**Priority Date:** MARCH 5, 1934  
**Rate:** 0.12 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.  
**Source:** ROCK CREEK, a tributary of the PUDDING RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 E	WM	31	NW SW	1240 FEET SOUTH AND 1090 FEET EAST FROM THE W1/4 CORNER OF SECTION 31

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 E	WM	31	SW NW	9.7

6. Transfer Application T-13151 proposes to move the authorized point of diversion approximately 642 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 E	WM	31	NW SW	BEAN POD - 675 FEET SOUTH AND 1280 FEET EAST FROM THE W1/4 CORNER OF SECTION 31

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

**Certificate:** 94129 in the name of WARREN H. BEAN, BERNICE S. BEAN AND NORTHWEST FARM CREDIT SERVICES, FLCA (perfected under Permit S-11196)  
**Use:** IRRIGATION of 2.4 ACRES  
**Priority Date:** MARCH 5, 1934  
**Rate:** 0.03 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-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated.  
**Source:** ROCK CREEK, a tributary of the PUDDING RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 E	WM	31	NW SW	1240 FEET SOUTH AND 1090 FEET EAST FROM THE W1/4 CORNER OF SECTION 31

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 E	WM	31	NW NW	1.0
4 S	1 E	WM	31	SW NW	1.4

8. Transfer Application T-13151 proposes to move the authorized point of diversion approximately 642 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 E	WM	31	NW SW	BEAN POD - 675 FEET SOUTH AND 1280 FEET EAST FROM THE W1/4 CORNER OF SECTION 31

9. 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)]***

10. Water has been used within the last five years prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
11. A diversion structure and ditch 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-13151.
12. The proposed change would not result in enlargement of the rights.
13. The proposed change would not result in injury to other water rights.
14. All other application requirements are met.

**Conclusions of Law**

The change in point of diversion proposed in Transfer Application T-13151 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 point of diversion proposed in Transfer Application T-13151 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 90218, 94129, and any related decree.
3. Water right Certificates 90218 and 94129 are cancelled. A new certificate will be issued describing that portion of Certificate 90218 not affected by this transfer.

4. The quantity of water diverted at the new point of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
5. On May 7, 2020, the Department received confirmation that an approved fish screen was installed and approved at the new point of diversion and provided a written statement from Oregon Department of Fish and Wildlife (ODFW)
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 rights shall no longer receive water under the rights.
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 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

OCT 13 2020

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

Mailing date:           OCT 14 2020