

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

In the Matter of Transfer Application            )  
T-13227, Umatilla County                        )  
  )  
  )    PRELIMINARY DETERMINATION  
  )    PROPOSING APPROVAL OF  
  )    CHANGES IN PLACE OF USE AND  
  )    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**

JIM HATLEY  
64880 E. BIRCH CREEK ROAD  
PILOT ROCK, OR 97868

**Agent**

BILL NEVE, WATER RIGHT SOLUTIONS, LLC  
P.O. BOX 511  
WALLA WALLA, WA 99362

**Findings of Fact**

1. On July 22, 2019, JIM HATLEY filed an application to change the place of use and point of diversion under Certificate 2488. The Department assigned the application number T-13227.
2. Notice of the application for transfer was published on July 30, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 27, 2020, the Department issued a draft Preliminary Determination proposing to approve Transfer Application T-13227. The draft Preliminary Determination cover letter set forth a deadline of March 26, 2020, for the applicant to respond.
4. On March 12, 2020, the applicant requested additional time to complete the necessary items before continuing with the application. The Department approved the additional time to be extended to April 26, 2020, to submit the items to the Department towards issuance of the Preliminary Determination.
5. On March 13, 2020, the applicant's agent requested the Department proceed with issuance of the Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

6. 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

7. 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.
8. 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

9. 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

10. 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

11. 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)]***

12. 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.
13. 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.
14. The proposed changes would not result in enlargement of the right.
15. The proposed changes would not result in injury to other water rights.
16. All other application requirements are met.

***Determination and Proposed Action***

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. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

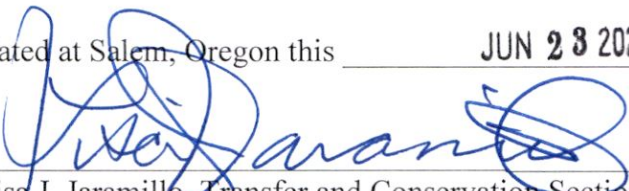
*If Transfer Application T-13227 is approved, the final order will include the following:*

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.*

Dated at Salem, Oregon this JUN 23 2020,

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

This Preliminary Determination was prepared by Ken Dowden. T-1327 has now been assigned to Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@oregon.gov)

*Protests should be addressed to the attention of Water Rights Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.*

**IMPORTANT:** Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

**Notice Regarding Service Members:** 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. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>



**Oregon**  
Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

June 23, 2020

JIM HATLEY  
64880 E. BIRCH CREEK ROAD  
PILOT ROCK, OR 97868

SUBJECT: Water Right Transfer Application T-13227

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13227. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order 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 and in the East Oregonian newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

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 Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

**IMPORTANT:** Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Please do not hesitate to contact me, at [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@oregon.gov) or (503) 986-0825, if I may be of assistance.

Sincerely,



Corey Courchane  
Transfer Specialist  
Transfer and Conservation Section

cc: T-13227  
Greg Silbernagel, District 5 Watermaster (*via e-mail*)  
Bill Neve, Agent for the applicant (*via e-mail*)

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