

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-13151, Clackamas County) PROPOSING APPROVAL OF A
) 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. 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

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.

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

5. 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

6. 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

7. 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

8. 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)]

9. 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.
10. 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.
11. The proposed change would not result in enlargement of the rights.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

Determination and Proposed Action

The change in point of diversion proposed in Transfer Application T-13151 appears 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-13151 is approved, the final order will include the following:

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. *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.

6. *The former place of use of the transferred rights shall no longer receive water under the rights.*
7. *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.*
8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on

JUN 30 2020


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

This Preliminary Determination was prepared by Joan Smith. If you have questions about the information in this document, you may reach me at 503-986-0892 or Joan.M.Smith@oregon.gov.
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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 servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.



Oregon

Kate Brown, Governor

Water Resources Department

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June ~~30~~, 2020

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

SUBJECT: Water Right Transfer Application T-13151

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13151. 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, 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 Department's notice.

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 503-986-0892 or Joan.M.Smith@Oregon.gov if I may be of assistance.

Sincerely,

Joan Smith
Transfer Specialist
Transfer and Conservation Section

cc: T-13151
Joel M. Plahn, District 16 Watermaster (via e-mail)

Doann Hamilton, Agent for the applicant (*via e-mail*)

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