

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12596, Douglas County	)	PROPOSING APPROVAL OF AN
	)	ADDITIONAL POINT OF DIVERSION
	)	AND A CHANGE IN CHARACTER OF
	)	USE

**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**

ROSEBURG FOREST PRODUCTS  
ATTN: ELLEN PORTER  
PO BOX 1088  
ROSEBURG, OR 97470

**Findings of Fact**

1. On February 27, 2017, ROSEBURG FOREST PRODUCTS, ATTN: ELLEN PORTER filed an application for an additional point of diversion and to change the character of use under Certificates 23974 and 31423, and to change the character of use under Certificate 33596. The Department assigned the application number T-12596.
2. Notice of the application for transfer was published on March 7, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 5, 2018, the Department contacted the applicant's agent by written correspondence to notify the agent that the Department is not authorized to approve transfer applications that include changes to storage water rights. The agent responded, expressing disagreement with the Department's determination, and believes the Department should continue processing T-12596.

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.
--

4. On March 26, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-12596 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 27, 2020, for the applicant to respond.
5. On May 1, 2020, the applicant's agent submitted a revised application and map, removing Certificate 31423 from the application, as the Department does not have authorization to change the character of use on a storage right.
6. On May 6, 2020, 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.
7. The first right to be transferred is as follows:

**Certificate:** 23974 in the name of RICHARD C. STRATFORD, TRUSTEE (perfected under Permit S-24432)  
**Use:** MAINTENANCE OF LOG POND, CONSTRUCTED UNDER APPLICATION NO. R-25970, PERMIT NO. R-1918  
**Priority Date:** OCTOBER 17, 1956  
**Rate:** 0.75 CUBIC FOOT PER SECOND  
**Source:** LIVINGSTON CREEK, a tributary of NORTH FORK of DEER CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC
27 S	4 W	WM	19	NW NE	47

**Authorized Place of Use:**

MAINTENANCE OF LOG POND, CONSTRUCTED UNDER APPLICATION NO. R-25970, PERMIT NO. R-1918						
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC
27 S	4 W	WM	18	SW NE		46
27 S	4 W	WM	18	SW SW		47
27 S	4 W	WM	18	SW SW		49
27 S	4 W	WM	18	SE SW		47
27 S	4 W	WM	18	SE SW		49
27 S	4 W	WM	18	NE SE		46
27 S	4 W	WM	18	NW SE		46
27 S	4 W	WM	18	NW SE		49
27 S	4 W	WM	18	SW SE	4	46
27 S	4 W	WM	18	SW SE		49
27 S	4 W	WM	18	SE SE		46
27 S	4 W	WM	19	NW NE	1	
27 S	4 W	WM	19	NW NE		47
27 S	4 W	WM	19	NE NW		47

8. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 23974 as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
27 S	4 W	WM	19	NW NE	1	POD 3 - 190 FEET SOUTH AND 2340 FEET WEST FROM THE NE CORNER OF SECTION 19

9. Transfer Application T-12596 proposes an additional point of diversion approximately 0.3 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
27 S	4 W	WM	19	NE NW	47	POD 1 - 790 FEET SOUTH AND 1640 FEET EAST FROM THE NW CORNER OF SECTION 19

10. Transfer Application T-12596 proposes to change the character of use under Certificate 23974 to maintenance of a multi-purpose reservoir and wetland enhancement.

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

**Certificate:** 33596 in the name of RICHARD C. STRATFORD, TRUSTEE (perfected under Permit S-29347)

**Use:** LOG STORAGE

**Priority Date:** NOVEMBER 18, 1963

**Rate:** 0.75 CUBIC FOOT PER SECOND (CFS), AND SHALL BE FURTHER LIMITED TO THE DEFICIENCY IN THE AVAILABLE SUPPLY IN LIVINGSTON CREEK UNDER A PRIOR RIGHT FOR THE SAME PURPOSE; THE RIGHT TO USE OF DIRECT FLOW IS LIMITED TO THE PERIOD WHEN THE FLOW OF THE SOUTH UMPQUA RIVER IS MORE THAN 60 CFS AT ITS MOUTH

**Source:** NORTH FORK DEER CREEK AND RESERVOIR CONSTRUCTED UNDER PERMIT NO. R-1918, a tributary of SOUTH UMPQUA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
27 S	4 W	WM	19	NW NW	47	POD 2 - 140 FEET SOUTH AND 2500 FEET WEST FROM THE NW CORNER OF WILLIS DLC 45

**Authorized Place of Use:**

LOG STORAGE						
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC
27 S	4 W	WM	18	NE SW		49
27 S	4 W	WM	18	SW SW		47
27 S	4 W	WM	18	SE SW		47
27 S	4 W	WM	18	SE SW		49
27 S	4 W	WM	18	NW SE		46
27 S	4 W	WM	18	NW SE		49
27 S	4 W	WM	18	SW SE	4	
27 S	4 W	WM	18	SW SE		46
27 S	4 W	WM	18	SW SE		47
27 S	4 W	WM	18	SW SE		49

LOG STORAGE						
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC
27 S	4 W	WM	18	SE SE		46
27 S	4 W	WM	19	NW NE	1	
27 S	4 W	WM	19	NW NE		47
27 S	4 W	WM	19	NE NW		47
27 S	4 W	WM	19	NW NW		47

12. Transfer Application T-12596 proposes to change the character of use under Certificate 33596 to maintenance of a multi-purpose reservoir and wetland enhancement.
13. 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 not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

14. 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 rights are subject to forfeiture under ORS 540.610.
15. A diversion structure 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-12596.
16. The proposed changes would not result in enlargement of the rights.
17. The proposed changes would not result in injury to other water rights.

**Determination and Proposed Action**

The additional points of diversion and changes in character of use proposed in Transfer Application T-12596 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-12596 is approved, the final order will include the following:*

1. *The additional points of diversion and changes in character of use proposed in Transfer Application T-12596 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 Certificates 23974 and 33596, and any related decree.*
3. *Water right Certificates 23974 and 33596 are cancelled.*

4. *The quantity of water diverted at the new additional point of diversion (POD 1), together with that diverted at the original point of diversion (POD 3), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 3).*
5. *Water use measurement conditions:*
  - a. *Before water use may begin under this order, the water user shall install a staff gauge, or, with prior approval of the Director, another suitable measuring device, at each 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.*
6. *Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*
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 changes and full beneficial use of the water.*

8. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on AUG 26 2020

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

This Preliminary Determination was prepared by 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 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**

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

August 26, 2020

ROSEBURG FOREST PRODUCTS  
ATTN: AMANDA ORTH  
PO BOX 1088  
ROSEBURG, OR 97470

SUBJECT: Water Right Transfer Application T-12596

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12596. 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 News Review 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-12596  
Susan M. Douthit, District 15 Watermaster (*via e-mail*)  
Theodore Ressler, Agent for the applicant (*via e-mail*)

encs