

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13536, Coos County)	PROPOSING APPROVAL OF A CHANGE IN
)	POINT OF DIVERSION AND A CHANGE IN
)	PLACE 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

OREGON DEPT. OF FISH & WILDLIFE
Attn: PERRY A. BAKER
4034 FAIRVIEW INDUSTRIAL DR SE
SALEM, OR 97302

Findings of Fact

1. On October 7, 2020, the OREGON DEPT. OF FISH AND WILDLIFE (ODFW) filed an application to change the point of diversion and place of use under Certificate 8265. The Department assigned the application number T-13536.
2. Notice of the application for transfer was published on October 20, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 12, 2018, the Applicant submitted Instream Transfer Application T-12866 involving Certificate 8265. T-12866 proposes to transfer instream 1.0 cfs. The remaining portion of Certificate 8265 not affected by Transfer Application T-12866 (2.5 cfs) is the subject of this transfer, T-13536.
4. On November 30, 2020, the Applicant submitted an amended map to better depict the existing and proposed points of diversion and places of use.
5. On January 15, 2021, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-1353613536 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 29, 2021, for the applicant to respond. The applicant requested that the Department proceed with

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.

issuance of a Preliminary Determination. The applicant The Applicant has provided all the necessary information to confirm it is authorized to pursue the transfer.

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

Certificate: 8265 in the name of BANDON TROUT FARM INC. (perfected under Permit S-8928), as modified by T-12866
Use: FISH POND FOR RAISING TROUT
Priority Date: FEBRUARY 23, 1929
Rate: 2.5 CUBIC FEET PER SECOND
Source: FAIREY CREEK, a tributary of the COQUILLE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
28 S	14 W	WM	30	NE SW	NONE LISTED

Authorized Place of Use:

FISH POND FOR RAISING TROUT				
Twp	Rng	Mer	Sec	Q-Q
28 S	14 W	WM	30	NE SW

7. Certificate 8265 does not describe the specific location of the point of diversion, however, information is available from the Certified Water Right Examiner and Department records indicating the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
28 S	14 W	WM	30	NE SW	(POD 1): NORTH 51 DEGREES 30 MINUTES 3373.0 FEET EAST FROM THE SW CORNER OF SECTION 30

8. Certificate 8265 does not list the season of use. The season of use for fish culture is January 1 through December 31.
9. Transfer Application T-13536 proposes to move the authorized point of diversion approximately 1.5 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
28 S	14 W	WM	29	SW SE	(POD 2): SOUTH 40 DEGREES 02 MINUTES 24.32 SECONDS EAST 1962.472 FEET FROM THE CENTER OF SECTION 29

10. Transfer Application T-13536 also proposes to change the place of use of the right to:

FISH POND FOR RAISING TROUT (FISH HATCHERY)				
Twp	Rng	Mer	Sec	Q-Q
28 S	14 W	WM	29	NE SE

11. The Oregon Department of Fish and Wildlife 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 currently equipped with an appropriate fish screen.

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 were present within the five-year period prior to submittal of Transfer Application T-13536.
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. An instream water right exists for the reach of the river in which the authorized point of diversion is proposed to move upstream. However, Certificate 8265 is senior in priority date to any other rights existing on the stream between the authorized and proposed points of diversion. Moving the point of diversion upstream will not harm the instream right, as currently the stream flow must be available for Certificate 8265, the senior right and most downstream right. Because the purpose of use is non-consumptive, no injury will result by moving the point of diversion.
16. All other application requirements are met.

Determination and Proposed Action

The change in point of diversion and change in place of use proposed in Transfer Application T-13536 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-13536 is approved, the final order will include the following:

1. *The change in point of diversion and change in place of use proposed in Transfer Application T-13536 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 8265 and any related decree.*
3. *Water right Certificate 8265 is cancelled.*

4. *The quantity of water diverted at the new point of diversion (POD 2) 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(s), provided however, where the meter(s) or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *The water user shall operate and maintain an approved fish screen at the new point of diversion. If Oregon Department of Fish and Wildlife (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, 2022**. 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 **MAR 17 2021** .



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

This Preliminary Determination was prepared by Teri Hranac. If you have questions about the information in this document, you may reach me at 503-986-0881 or Teri.K.Hranac@oregon.gov.

Protests should be addressed to the attention of Water Rights 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.*

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

March 17, 2021

VIA E-MAIL

Applicant

OREGON DEPT. OF FISH & WILDLIFE
ATTN: DANETTE FAUCERA
4034 FAIRVIEW INDUSTRIAL DR SE
SALEM, OR 97302

SUBJECT: Water Right Transfer Application T-13536

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13536. 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 World* 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 teri.k.hranac@oregon.gov or 503-986-0881, 503-986-0886 or Patrick.K.Starnes@wrdd.state.or.us if I may be of assistance.

Sincerely,

Transfer and Conservation Section

Enclosure

cc: Transfer Application file T-
Susan Douthit, District #15 Watermaster (*via e-mail*)