



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

May 11, 2021

OREGON DEPARTMENT OF FISH AND WILDLIFE
PO BOX 93, 45403 HWY 26
DAYVILLE, OR 97825

SUBJECT: Water Right Transfer Application T-13511

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13511. 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 Blue Mountain Eagle 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 or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-13511
Eric W. Julsrud, District 4 Watermaster (*via e-mail*)

encs

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13511, Grant 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

OREGON DEPARTMENT OF FISH AND WILDLIFE
PO BOX 93, 45403 HWY 26
DAYVILLE, OR 97825

Findings of Fact

1. On September 2, 2020, OREGON DEPARTMENT OF FISH AND WILDLIFE filed an application to change the point of diversion under Certificate 25865. The Department assigned the application number T-13511.
2. Notice of the application for transfer was published on September 8, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 28, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13511 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 1, 2021, for the applicant to respond. 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.

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. The right to be transferred is as follows:

Certificate: 25865 in the name of STEWART LIVESTOCK COMPANY,
INCORPORATED BY SARAH STEWART, PRESIDENT (confirmed by
John Day River (F) Decree)
Use: IRRIGATION, DOMESTIC AND STOCK
Priority Date: 1897
Rate: 1/40 CUBIC FOOT PER SECOND PER ACRE IRRIGATED TO JUNE 1
AND 1/80 CUBIC FOOT PER SECOND PER ACRE THEREAFTER;
FURTHER LIMITED TO ONE ACRE-FOOT PER CALENDAR MONTH
TO JUNE 1 AND FOUR ACRE-FOOT PER ACRE DURING SEASON
APRIL 1 TO SEPT. 30, MEASURED AT POINT OF DIVERSION
Source: FLAT CREEK, tributary of JOHN DAY RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Not specified in certificate					

Authorized Place of Use:

IRRIGATION, DOMESTIC AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	27 E	WM	13	NE NW	9.6
13 S	27 E	WM	13	NW NW	22.4
13 S	27 E	WM	13	SW NW	0.8
13 S	27 E	WM	13	SE NW	14.9
13 S	27 E	WM	14	NE NE	0.2
Total					47.9

5. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 25865 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	27 E	WM	13	NW SE	POD 1 - LATITUDE: 44° 26' 23.26" NORTH LONGITUDE: -119° 25' 09.56" WEST

6. Transfer Application T-13511 proposes to move the authorized point of diversion approximately 1491.3 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	27 E	WM	13	SE SW	POD 2 - LATITUDE: 44° 26' 10.31" NORTH LONGITUDE: -119° 25' 14.63" WEST

7. 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 currently equipped with an appropriate fish screening and/or by-pass device.

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

8. 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.
9. 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-13511.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.
12. All other application requirements are met.

Determination and Proposed Action

The change in point of diversion proposed in Transfer Application T-13511 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.

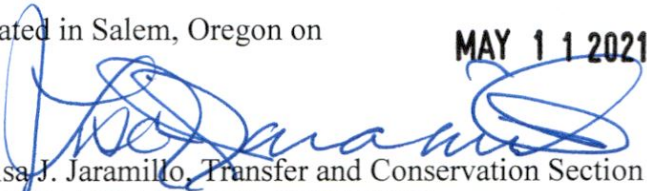
If Transfer Application T-13511 is approved, the final order will include the following:

1. *The change in point of diversion proposed in Transfer Application T-13511 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 Certificate 25865 and any related decree.*
3. *Water right Certificate 25865 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 point of diversion (new and existing).*
 - 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. *The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife'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, 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.*
8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on

MAY 11 2021


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

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.