

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13555, Josephine County)	PROPOSING APPROVAL OF CHANGES IN
)	POINTS 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

AVIS HARBOLDT
12863 REDWOOD HWY.
WILDERVILLE, OR 97543-9710

Findings of Fact

1. On December 10, 2020, AVIS HARBOLDT filed an application to change the points of diversion under Certificate 15522 and 27392, and to change the point of diversion and place of use under Certificate 15257. The Department assigned the application number T-13555.
2. Notice of the application for transfer was published on December 15, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 6, 2021, the Department requested legible copies of Table 2 for all certificates in the application. On that same day, the agent for the applicant sent the legible copies.
4. On March 13, 2021, the Department sent a deficiency letter to the agent, requesting that revisions be made by April 12, 2021. On April 7, 2021, revised application and maps were received by the Department, satisfying the deficiency.

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.
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5. On May 26, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13555 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 25, 2021, for the applicant 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.

6. The first right to be transferred is as follows:

Certificate: 15257 in the name of G. L. CHAPMAN (perfected under Permit S-14646)
Use: IRRIGATION OF 2.0 ACRES
Priority Date: OCTOBER 14, 1940
Rate: 0.025 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, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.5 acre feet per acre for each acre irrigated during the irrigation season from April 2, to October 31, of each year.
Source: SLATE CREEK, a tributary of APPLGATE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
37 S	7 W	WM	17	SE SW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	7 W	WM	17	NW SE	2.00

7. The Department received information that better describes the location of the authorized point of diversion for Certificate 15257 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
37 S	7 W	WM	17	SE SW	POD #1 – 1250 FEET NORTH AND 900 FEET WEST FROM THE SE CORNER OF THE SE ¼ SW ¼ OF SECTION 17

8. Transfer Application T-13555 proposes to move the authorized point of diversion approximately 950 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	7 W	WM	17	NE SW	POD #3 – 2056 FEET NORTH AND 365 FEET WEST FROM THE SE CORNER OF THE SE ¼ SW ¼ OF SECTION 17

9. Transfer Application T-13555 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	7 W	WM	17	NW SE	0.9
37 S	7 W	WM	17	NE SW	1.1
TOTAL					2.0

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

Certificate: 15522 in the name of G.L. CHAPMAN (perfected under Permit S-17866)
Use: FISH PROPAGATION
Priority Date: AUGUST 15, 1947
Rate: 0.50 CUBIC FOOT PER SECOND
Source: SLATE CREEK, a tributary of APPLGATE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
37 S	7 W	WM	17	SE SW

Authorized Place of Use:

FISH PROPAGATION					
Twp	Rng	Mer	Sec	Q-Q	
37 S	7 W	WM	17	NW SE	

11. Transfer Application T-13555 proposes to move the authorized point of diversion approximately 950 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	7 W	WM	17	NE SW	POD #3 – 2056 FEET NORTH AND 365 FEET WEST FROM THE SE CORNER OF THE SE ¼ SW ¼ OF SECTION 17

12. The third right to be transferred is as follows:

Certificate: 27392 in the name of GLEN L. CHAPMAN (perfected under Permit S-24631)
Use: DOMESTIC USE FOR FOUR FAMILIES
Priority Date: DECEMBER 18, 1956
Rate: 0.01 CUBIC FOOT PER SECOND
Source: UNNAMED CREEK, tributary of SLATE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
37 S	7 W	WM	17	SE SW

Authorized Place of Use:

DOMESTIC USE FOR FOUR FAMILIES				
Twp	Rng	Mer	Sec	Q-Q
37 S	7 W	WM	17	NW SE

13. The Department received information that better describes the location of the authorized point of diversion for Certificate 27392 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
37 S	7 W	WM	17	NW SE	POD #2 – 1310 FEET NORTH AND 611 FEET WEST FROM THE SE CORNER OF THE SE ¼ SW ¼ OF SECTION 17

14. Transfer Application T-13555 proposes to move the authorized point of diversion approximately 950 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	7 W	WM	17	NE SW	POD #3 – 2056 FEET NORTH AND 365 FEET WEST FROM THE SE CORNER OF THE SE ¼ SW ¼ OF SECTION 17

15. 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)]

16. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the records that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
17. 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-13555.
18. The proposed changes would not result in enlargement of the rights.
19. The proposed changes would not result in injury to other water rights.
20. All other application requirements are met.

Determination and Proposed Action

The changes in points of diversion and change in place of use proposed in Transfer Application T-13555 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-13555 is approved, the final order will include the following:

1. *The change in points of diversion and change in place of use proposed in Transfer Application T-13555 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 15257, 15522, and 27392 and any related decree.*
3. *Water right Certificates 15257, 15522, and 27392 are cancelled.*
4. *Under Certificates 15522 and 15257, 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. *Under Certificate 27392, 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 #2).*
6. *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.*
7. *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.

8. The former place of use of the transferred right, under Certificate 15257, shall no longer receive water under the right.
9. 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 changes and full beneficial use of the water.
10. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated in Salem, Oregon on **JUN 07 2021**


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

This Preliminary Determination was prepared by: Tamera Smith. If you have any questions about the information in this document, you may reach me at 503-986-0864 or tamera.l.smith@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 these proceedings under the federal service members 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

JUNE 7, 2021

AVIS HARBOLDT
12863 REDWOOD HWY
WILDERVILLE, OR 97543

SUBJECT: Water Right Transfer Application T-13555

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13555. 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 503-986-0886 or Patrick.K.Starnes@wrd.state.or.us if I may be of assistance.

Kindest regards,



Tamera Smith
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-13555
Scott C. Ceciliani, District 14 Watermaster *(via e-mail)*
Jake Johnstone, SW Region Manager *(via e-mail)*
Robert G. Borst, Agent for the applicant *(via e-mail)*
Jim McCarthy, Water Watch, Interested Party *(via e-mail)*

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