



Oregon

Kate Brown, Governor

Water Resources Department

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JULY 21, 2022

VIA CERTIFIED MAIL AND E-MAIL

DELTA SAND AND GRAVEL CO.
999 DIVISION AVE.
EUGENE, OR 97404

SUBJECT: Water Right Transfer Application T-13628

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13628. 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 Eugene Weekly 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.

Please do not hesitate to contact me at tamera.l.smith@water.oregon.gov or 503-979-9607 if I may be of assistance.

Kindest regards,



Tamera Smith
Transfer Caseworker
Transfer and Conservation Section

cc: Transfer Application file T-13628
Lanaya F. Blakely, District 2 Watermaster (*via e-mail*)
EGR and Associates Inc., Steve Recca, agent for the applicant (*via e-mail*)
Josh Newton, attorney for the applicant (*via e-mail*)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13628, Lane County)	PROPOSING APPROVAL OF A CHANGE IN
)	PLACE OF USE AND 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

DELTA SAND AND GRAVEL CO.
999 DIVISION AVE.
EUGENE, OR 97404

Findings of Fact

1. On February 22, 2021, DELTA SAND AND GRAVEL CO. filed an application for a change in place of use, and to change the character of use under Certificate 65679. The Department assigned the application number T-13628.
2. Notice of the application for transfer was published on March 9, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 30, 2021, the Department requested that the agent revise Table 2 of the transfer application to match the transfer application map.
4. On May 3, 2021, the Department received a revised Transfer Application Table 2.
5. On May 28, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-13628 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 27, 2021, for the applicant to respond.

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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6. On June 15, 2021, the agent for the applicant requested the response deadline be extended to July 28, 2021. The Department granted the request to extend the response deadline.
7. On July 26, 2021, the applicant sent the Department a revised application, removing the additional point of diversion.
8. On September 21, 2021, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-13628 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of October 30, 2021, for the applicant to respond.
9. On October 27, 2021, the agent for the applicant requested that the Department proceed with issuance of a Preliminary Determination and requested an extension to November 19, 2021 to provide the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
10. On March 8, 2022, the Department requested that the agent revise Table 2 of the transfer application to match the transfer application map, specifically: T17S, R4W, Section 12 NENW and SENW quarter-quarters.
11. On March 16, 2022, the Department received a revised Table 2. The quarter-quarters in question had been removed from the application.
12. On May 9, 2022, the Department mailed a copy of the second revised draft Preliminary Determination proposing to approve Transfer Application T-13628 to the applicant. The second revised draft Preliminary Determination cover letter set forth a deadline of June 8, 2022, for the applicant to respond. The agent for the applicant requested that the Department proceed with issuance of a Preliminary Determination.
13. The right to be transferred is as follows:

Certificate: 65679 in the name of DELTA SAND AND GRAVEL COMPANY (perfected under Permit S-50130)

Use: WASHING SAND AND GRAVEL

Priority Date: AUGUST 4, 1987

Rate: 7.14 CUBIC FEET PER SECOND

Source: WILLAMETTE RIVER, a tributary of COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
17 S	3 W	WM	18	NW NW	4	402 FEET SOUTH AND 626 FEET EAST FROM THE NW CORNER OF SECTION 18

Authorized Place of Use:

WASHING SAND AND GRAVEL					
Twp	Rng	Mer	Sec	Q-Q	GLot
17 S	3 W	WM	18	NW NW	4

14. Transfer Application T-13628 proposes to change the place of use of the right to:

GENERAL INDUSTRIAL				
Twp	Rng	Mer	Sec	Q-Q
17 S	3 W	WM	6	SW NW
17 S	3 W	WM	6	NE SW
17 S	3 W	WM	6	NW SW
17 S	3 W	WM	6	SW SW
17 S	3 W	WM	6	SE SW
17 S	3 W	WM	7	NW NE
17 S	3 W	WM	7	SW NE
17 S	3 W	WM	7	NE NW
17 S	3 W	WM	7	NW-NW
17 S	3 W	WM	7	SE NW
17 S	3 W	WM	7	SW NW
17 S	3 W	WM	7	NW SW
17 S	3 W	WM	7	SW SW
17 S	3 W	WM	18	NW NW
17 S	4 W	WM	1	NE NE
17 S	4 W	WM	1	NW NE
17 S	4 W	WM	1	SE NE
17 S	4 W	WM	1	SW NE
17 S	4 W	WM	1	NE SE
17 S	4 W	WM	1	NW SE
17 S	4 W	WM	12	NE NE
17 S	4 W	WM	12	NW NE
17 S	4 W	WM	12	SW NE
17 S	4 W	WM	12	SE NE
17 S	4 W	WM	12	NE SE
17 S	4 W	WM	12	NW SE
17 S	4 W	WM	12	SW SE
17 S	4 W	WM	12	SE SE
17 S	4 W	WM	13	NE NE
17 S	4 W	WM	13	NW NE

15. Transfer Application T-13628 proposes to change the character of use to general industrial.

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 right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.

17. A pump and pipeline 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-13628.

18. The proposed changes would not result in enlargement of the right.
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 change in place of use and change in character of use proposed in Transfer Application T-13628 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-13628 is approved, the final order will include the following:

1. *The change in place of use and change in character of use proposed in Transfer Application T-13628 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 65679 and any related decree.*
3. *Water right Certificate 65679 is cancelled.*
4. *The former place of use of the transferred right shall no longer receive water under the right.*
5. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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.*
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.*
 - 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. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on JUL 27 2022



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 503-979-9607 or tamera.l.smith@water.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.

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.