



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

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September 22, 2022

VIA CERTIFIED MAIL AND E-MAIL

RICK NEAL
PO BOX 861
WINCHESTER, OR 97495

SUBJECT: Water Right Transfer Application T-13642

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13642. 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.

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.

Sincerely,

Arla L Davis

Arla L Davis
Transfer Specialist
Transfer and Conservation Section

cc: T-13642
Susan M. Douthit, District 15 Watermaster (*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-13642, Douglas County) PROPOSING APPROVAL OF AN
) ADDITIONAL 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

RICK NEAL
PO BOX 861
WINCHESTER, OR 97495

Findings of Fact

1. On February 25, 2021, RICK NEAL filed an application for an additional point of diversion under Certificate 87856. The Department assigned the application number T-13642.
2. Notice of the application for transfer was published on March 23, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 11, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13642 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 11, 2022, 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.
4. The right to be transferred is as follows:
 - Certificate:** 87856 in the name of PETER J. PON (perfected under Permit S-24057)
 - Use:** IRRIGATION of 43.48 ACRES
 - Priority Date:** FEBRUARY 15, 1956
 - Rate:** 0.545 CUBIC FOOT PER SECOND

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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Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: NORTH UMPQUA RIVER, a tributary to the UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	6 W	WM	27	SW NE	AS PROJECTED WITH HANNON DLC 42

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
26 S	6 W	WM	27	SW NE	42	8.0
26 S	6 W	WM	27	SE NW	42	20.68
26 S	6 W	WM	27	NE SW	42	14.0
26 S	6 W	WM	27	NW SE	42	0.8
Total						43.48

5. Certificate 87856 does not describe the measured distance of the location of the authorized point of diversion; however, the applicant has provided information in Transfer Application T-13642 that describes the measured distance as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
26 S	6 W	WM	27	SW NE	42	POD #1 - 2610 FEET SOUTH AND 400 FEET EAST FROM THE N1/4 CORNER OF SECTION 27

6. Transfer Application T-13642 proposes an additional point of diversion approximately 275 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
26 S	6 W	WM	27	SW NE	42	POD #2 - 2540 FEET NORTH AND 2947 FEET EAST FROM THE SW CORNER OF SECTION 27

7. The Oregon Department of Fish and Wildlife (ODFW) 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 not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

8. Water has been used within the last five years
9. A pump, pipeline, and sprinkler system 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-13642.

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

Determination and Proposed Action

The additional point of diversion proposed in Transfer Application T-13642 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-13642 is approved, the final order will include the following:

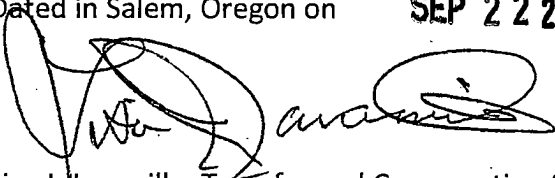
1. *The additional point of diversion proposed in Transfer Application T-13642 is approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in Certificate 87856 and any related decree.*
3. *Water right Certificate 87856 is cancelled.*
4. *The quantity of water diverted at the additional point of diversion (POD #2), together with that diverted at the original point of diversion (POD #1), shall not exceed the quantity of water lawfully available at the original point of diversion (new and existing).*
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.*
 - 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 an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If 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. *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 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 **SEP 22 2022**



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Arla L Davis. If you have any questions about the information in this document, you may reach me at 503-979-3129 or arla.l.davis@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 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.