



Oregon

Tina Kotek, Governor

Water Resources Department

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February 9, 2023

VIA CERTIFIED MAIL AND E-MAIL

EAGLE VALLEY SWCD
3990 MIDWAY DR
BAKER CITY, OR 97814

SUBJECT: Water Right Transfer Application T-13993

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13993. 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.

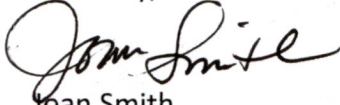
A public notice is being published in the Department's weekly publication and in the Hells Canyon Journal newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department 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 503-986-0892 or Joan.M.Smith@water.oregon.gov if I may be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Joan Smith". The signature is written in a cursive style with a large initial "J".

Joan Smith

Transfer Specialist

Transfer and Conservation Section

cc: Transfer Application T-13993
Marcy J. Osborn, District 8 Watermaster (*via e-mail*)

encs

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13993, Baker 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

EAGLE VALLEY SWCD
3990 MIDWAY DR
BAKER CITY, OR 97814

Findings of Fact

1. On April 22, 2022, EAGLE VALLEY SWCD filed an application for an additional point of diversion under Certificates 10424, 36813, 46652, 85796, and 95484. The Department assigned the application number T-13993.
2. Notice of the application for transfer was published on May 10, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 7, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13993 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of October 7, 2022, for the applicants 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 and requested additional time to complete the changes.

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 first right to be transferred is as follows:

Certificate: 10424 in the name of C. A. OLIVER (confirmed by Pine Creek Decree Volume 11, at page 235)
Use: IRRIGATION of 80.0 ACRES, AND DOMESTIC AND STOCK USE
Priority Date: 1877
Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE-FORTIETH of a cubic foot per second per acre, measured at the point of diversion, and a total limitation of one acre-foot per acre during July, one acre-foot per acre during August, and one-half acre-foot per acre during September of each year.
Source: EAST PINE CREEK

Authorized Point of Diversion:

Not described on Certificate

Authorized Place of Use:

IRRIGATION, DOMESTIC, AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	46 E	WM	10	NE NW	12.0
8 S	46 E	WM	10	NW NW	10.0
8 S	46 E	WM	10	SW NW	30.0
8 S	46 E	WM	10	SE NW	28.0
Total					80.0

5. Certificate 10424 does not describe the point of diversion; however, the applicant provided a description of the point of diversion as below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	46 E	WM	4	SE SE	GREENER OLIVER (IRWIN) -NONE GIVEN

6. Transfer Application T-13993 proposes an additional point of diversion approximately 0.17 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	46 E	WM	4	SE SE	DEARTH - 391 FEET NORTH AND 1330 FEET WEST FROM THE SE CORNER OF SECTION 4

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

Certificate: 36813 in the name of PAUL A. DALGLIESH (confirmed by Pine Creek Decree Volume 11 at page 235)
Use: IRRIGATION of 40.0 ACRES, DOMESTIC AND STOCK USE
Priority Date: 1881
Rate: 1.0 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE-FORTIETH of a cubic foot per second per acre, measured at the point of diversion, and a total limitation of one-acre-foot per acre during July, one acre-foot per acre during August, and one-half acre-foot per acre during September of each year.

Source: EAST PINE CREEK

Authorized Point of Diversion:

Not described on Certificate

Authorized Place of Use:

IRRIGATION, DOMESTIC, AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	46 E	WM	10	SW NE	25.0
8 S	46 E	WM	10	SE NE	15.0
Total					40.0

8. Certificate 36813 does not describe the point of diversion; however, the applicant provided a description of the point of diversion as described below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	46 E	WM	10	NE NW	GEORGE OLIVER - 1200 FEET NORTH AND 1920 FEET EAST FROM THE NW CORNER OF SECTION 10

9. Transfer Application T-13993 proposes an additional point of diversion approximately 1.0 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	46 E	WM	4	SE SE	DEARTH - 391 FEET NORTH AND 1330 FEET WEST FROM THE SE CORNER OF SECTION 4

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

Certificate: 46652 in the name of WALTER R. IRWIN (confirmed by Pine Creek Decree Volume 11, at Page 235)

Use: IRRIGATION of 15.0 ACRES AND STOCK USE

Priority Date: 1881

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE-FORTIETH of a cubic foot per second per acre, measured at the point of diversion, and a total limitation of one-acre-foot per acre during July, one acre-foot per acre during August, and one-half acre-foot per acre during September of each year.

Source: EAST PINE CREEK, tributary of PINE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	46 E	WM	10	NW SE	75 FEET SOUTH AND 450 FEET EAST FROM THE C1/4 CORNER OF SECTION 10

Authorized Place of Use:

IRRIGATION AND STOCK						
Twp	Rng	Mer	Sec	Q-Q	Acres	
8 S	46 E	WM	10	NE SE	15.0	

11. Transfer Application T-13993 proposes an additional point of diversion approximately 1.12 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	46 E	WM	4	SE SE	DEARTH - 391 FEET NORTH AND 1330 FEET WEST FROM THE SE CORNER OF SECTION 4

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

Certificate: 85796 in the name of NORVIL GREENER (confirmed by Pine Creek Decree Volume 11 at Page 235)

Use: IRRIGATION of 92.0 ACRES, DOMESTIC AND STOCK USE

Priority Date: 1877 for Tract #1

Limit/Duty: The amount of water used for irrigation, is limited to a diversion of ONE-FORTIETH of a cubic foot per second, or its equivalent for each acre irrigated, measured at the point of diversion, and shall be further limited to a of not to exceed 1.0 acre-foot per acre during July, 1.0 acre-foot per acre during August, and 0.5 acre-foot per acre during September, during the irrigation season of each year.

Source: EAST PINE CREEK, tributary of PINE CREEK

Authorized Point of Diversion:

Measured Distances
NONE GIVEN

Authorized Place of Use:

IRRIGATION, DOMESTIC AND STOCK						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tract
8 S	46 E	WM	10	NE SW	40.0	#1
8 S	46 E	WM	10	NW SW	32.0	#1
8 S	46 E	WM	10	SE SW	20.0	#1
Total					92.0	

13. Certificate 85796 does not describe the point of diversion, however information from the applicant is available describing the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	46 E	WM	10	NW SE	GREENER OLIVER

14. Transfer Application T-13993 proposes an additional point of diversion approximately 0.17 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	46 E	WM	4	SE SE	DEARTH - 391 FEET NORTH AND 1330 FEET WEST FROM THE SE CORNER OF SECTION 4

15. The fifth right to be transferred is as follows:

Certificate: 95484 in the name of DENSON DRY CREEK LLC (confirmed by Pine Creek Decree at Volume 11, Page 235)

Use: IRRIGATION OF 130.1 ACRES, DOMESTIC, AND STOCK USE FOR TRACT 1 AND IRRIGATION OF 3.6 ACRES, DOMESTIC AND STOCK USE FOR TRACT 3

Priority Date: 1881 FOR TRACT 1 and 1914 FOR TRACT 3

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE-FORTIETH of a cubic foot per second per acre, measured at the point of diversion, and a total limitation of one-acre-foot per acre during July, one acre-foot per acre during August, and one-half acre-foot per acre during September of each year.

Source: EAST PINE CREEK, tributary of PINE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	46 E	WM	4	SE SE	OLIVER AND SULLIVAN POD (ORIGINAL FOR A PORTION OF TRACT 1 AND ADDITIONAL FOR A PORTION OF TRACT 1 AND TRACT 3) - 200 FEET NORTH AND 1000 FEET WEST FROM THE SE CORNER OF SECTION 4

Authorized Place of Use:

IRRIGATION, DOMESTIC AND STOCK							
Twp	Rng	Mer	Sec	Q-Q	Acres	Tract	POD
8 S	46 E	WM	3	SW SE	37.0	1	OLIVER AND SULLIVAN
8 S	46 E	WM	3	SW SE	2.0	1	OLIVER AND SULLIVAN
8 S	46 E	WM	3	SE SE	35.0	1	HK OLIVER & OLIVER AND SULLIVAN
8 S	46 E	WM	10	NE NE	23.0	1	HK OLIVER & OLIVER AND SULLIVAN
8 S	46 E	WM	10	NE NE	4.0	1	HK OLIVER & OLIVER AND SULLIVAN
8 S	46 E	WM	10	NE NE	3.6	3	HK OLIVER & OLIVER AND SULLIVAN
8 S	46 E	WM	10	NW NE	24.1	1	OLIVER AND SULLIVAN
8 S	46 E	WM	10	NW NE	5.0	1	HK OLIVER & OLIVER AND SULLIVAN
Total					133.7		

16. Transfer Application T-13993 proposes an additional point of diversion approximately 0.07 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	46 E	WM	4	SE SE	DEARTH - 391 FEET NORTH AND 1330 FEET WEST FROM THE SE CORNER OF SECTION 4

17. 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)]

18. 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 rights are subject to forfeiture under ORS 540.610.
19. 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-13993.
20. The proposed change would not result in enlargement of the rights.
21. The proposed change would not result in injury to other water rights.
22. All other application requirements are met.

Determination and Proposed Action

The additional point of diversion proposed in Transfer Application T-13993 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.

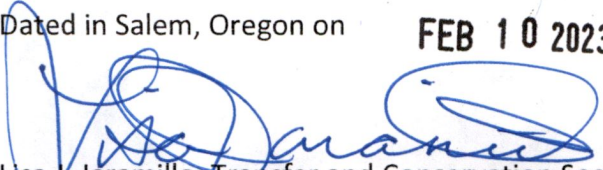
If Transfer Application T-13993 is approved, the final order will include the following:

1. *The additional point of diversion proposed in Transfer Application T-13993 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 Certificates 10424, 36813, 36813, 95484, 85796, and 46652 and any related decree.*
3. *Water right Certificates 10424, 36813, 36813, 95484, 85796, and 46652 are cancelled.*
4. *New certificates will be issued describing those portions of the rights not affected by this transfer.*
5. *The quantity of water diverted at the proposed additional point of diversion (Dearth), together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.*

6. *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.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2027**. 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, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on

FEB 10 2023


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

This Preliminary Determination was prepared by Joan Smith. If you have questions about the information in this document, you may reach me at 503-9869-0892 or Joan.M.Smith@water.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.

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.