

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13674, Yamhill County)	PROPOSING APPROVAL OF CHANGES IN
)	PLACE OF USE AND CHANGES IN
)	CHARACTER OF USE

Authority

Oregon Revised Statutes (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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

RANDAL AEBI
PO BOX 762
MCMINNVILLE, OR 97128

Findings of Fact

1. On April 22, 2021, RANDAL AEBI filed an application to change the place of use and to change the character of use under Certificates 39560 and 47123. The Department assigned the application number T-13674.
2. Notice of the application for transfer was published on April 27, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 22, 2023, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13674 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 23, 2023, 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 the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, of this preliminary determination.

4. On September 29, 2023, the applicant requested to extend the period for full beneficial use of the water to October 1, 2025. The extra time is needed to make electrical repairs, and the power company has an unpredictable schedule. The Department granted the longer time pursuant to OAR 690-380-5140(3).

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

Certificate: 39560 in the name of WALLACE AEBI (perfected under Permit G-4553)
Use: SUPPLEMENTAL FISH CULTURE AND RECREATION
Priority Date: APRIL 1, 1969
Rate: 0.01 CUBIC FOOT PER SECOND
Limit/Duty: The amount shall be limited to appropriation of water only to the extent that it does not impair or substantially interfere with existing surface water rights of others.
Source: A WELL, a tributary of an unnamed stream (NORTH YAMHILL RIVER)

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	4 W	WM	10	NW NE	45	1360 FEET NORTH AND 970 FEET EAST FROM THE NE CORNER OF LOT 2 (SE1/4 NW1/4) OF SECTION 10

Authorized Place of Use:

SUPPLEMENTAL FISH CULTURE AND RECREATION					
Twp	Rng	Mer	Sec	Q-Q	DLC
4 S	4 W	WM	10	NW NE	45
4 S	4 W	WM	10	SW NE	45

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

Certificate: 47123 in the name of WALLACE AEBI (perfected under Permit G-5866)
Use: SUPPLEMENTAL FISH CULTURE AND RECREATION
Priority Date: JULY 2, 1973
Rate: 0.04 CUBIC FOOT PER SECOND
Limit/Duty: The amount shall be limited to appropriation of water only to the extent that it does not impair or substantially interfere with existing surface water rights of others.
Source: WELL NO. 2, a tributary of YAMHILL RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	4 W	WM	10	NW NE	45	WELL No. 2 - 1330 FEET NORTH AND 940 FEET EAST FROM THE NE CORNER OF LOT 2 (SE1/4 NW 1/4) OF SECTION 10

Authorized Place of Use:

SUPPLEMENTAL FISH CULTURE AND RECREATION					
Twp	Rng	Mer	Sec	Q-Q	DLC
4 S	4 W	WM	10	NW NE	45
4 S	4 W	WM	10	SW NE	45

7. Transfer Application T-13674 proposes to change the place of use of the rights to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	4 W	WM	3	SE SW	45	12.0
4 S	4 W	WM	3	SW SE	45	17.3
4 S	4 W	WM	10	NW NE	45	20.7
4 S	4 W	WM	10	SW NE	45	13.0
4 S	4 W	WM	10	NE NW	45	11.6
4 S	4 W	WM	10	SE NW	45	4.7
					Total	79.3

8. Transfer Application T-13674 also proposes to change the character of use for each right to Irrigation.

9. Certificates 39560 and 47123 do not specify a season of use, however, supplemental fish culture and recreation are considered a year-round use. Irrigation is not considered a year-round use, and therefore, must include a seasonal limitation. Pursuant to the Yamhill River (F) Decree, the irrigation season is April 1 through September 30 of each year.

10. Transfer Application T-13674 requests that the individual rates of 0.01 cubic foot per second (cfs) under Certificate 39560, and 0.04 cfs under Certificate 47123 for supplemental fish culture and recreation be converted to irrigation use. The proposed system would pump the water from the two authorized wells into Aebi Reservoir, authorized under Certificate 39584, which would be used as a bulge in the system less than or equal to 10 days prior to irrigating. Since supplemental fish culture and recreation are non-consumptive uses, and irrigation is a consumptive use, the quantity of water to be transferred would be limited to the amount of evaporation loss from Aebi Reservoir. Aebi Reservoir has a surface area of approximately 3.03 acres, or 132,000 square feet. Based on the best available information, the annual evaporation rate for the Willamette Basin is 1.42 Acre-Feet (AF) per year. Therefore, the amount of water available to be transferred is limited to 4.30 AF (3.03 acres x 1.42 AF), or 0.012 cfs (4.30 AF/183 days/1.983471 AF/day). The combined total of water allowed between the two certificates is 0.05 cfs. Certificate 39560 represents 20% of the combined total (0.01/0.05), so the rate to be transferred under Certificate 39560 would be limited to 0.002 cfs. Certificate 47123 represents 80% of the combined total, so the rate to be transferred under Certificate 47123 would be limited to 0.01 cfs.

Transfer Review Criteria [OAR 690-380-0100(14), and 690-380-4010(2),]

11. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
12. A water delivery system 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-13674.
13. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
14. The proposed changes, as conditioned, would not result in enlargement of the rights.
15. The proposed changes, as conditioned, would not result in injury to other existing water rights.
16. All other application requirements are met.

Determination and Proposed Action

The changes in place of use and character of use proposed in Transfer Application T-13674 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-13674 is approved, the final order will include the following:

1. *The changes in place of use and character of use proposed in Transfer Application T-13674 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 Certificates 39560 and 47123 and any related decree.*
3. *Approval of this transfer application does not constitute nor grant legal access onto or through another person's property for purposes of accessing the new place of use.*
4. *Water right Certificates 39560 and 47123 are cancelled.*
5. *The use of water for the proposed irrigation use is limited to 0.012 cubic foot per second (cfs), being 0.002 cfs from the authorized well under Certificate 39560, and 0.01 cfs from Well No. 2 under Certificate 47123, and shall be further limited to a total volume diverted of 4.30 Acre-Feet during the season of use, being April 1 through September 30.*

6. *The former place of use of the transferred rights shall no longer receive water under the rights.*
7. *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 appropriation (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.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2025**. 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.*
9. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on **DEC 18 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 Corey Courchane. If you have questions about the information in this document, you may reach me at 503-979-3917 or corey.a.courchane@water.oregon.gov

Protests

Under the provisions of ORS 540.520(6) & (7) and OAR 690-380-4030, within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, any person may file, jointly or severally, a protest expressing opposition of approval of the transfer application and disagreement with this Preliminary Determination or a standing statement in support of this Preliminary Determination. If this Preliminary Determination determines that a change in point of diversion or appropriation would result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050. Protests and standing statements must be received by the Water Resources Department within 30 days after the last

date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later.

Protests must be in writing and received in hard copy form with the appropriate statutory protest filing fee; protests cannot be filed by electronic mail. [OAR 690-002-0025(3) and 690-380-0100(9)]. The protest must include the following:

- The person's name, address, and telephone number;
- All reasonably ascertainable issues and all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue may preclude consideration of the issue during the hearing;
- If you are the applicant, a protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$950 required by ORS 536.050 and proof of service of the protest upon the applicant.

Requests for Standing

Under the provisions of OAR 690-380-4030(5), the Department shall provide to persons who have filed standing statements as defined under OAR 690-380-0100(11) notice of any differences between the Department's Preliminary Determination and the Final Order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

Requests for standing must be received in the Water Resources Department no later than 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the preliminary determination as issued.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been filed under OAR 690-380-4030. In accordance with OAR 690-380-4200, notice and conduct of the hearing shall:

- Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties stipulate otherwise; and
- If a protest has asserted that a water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

If after hearing the Department issues a proposed Final Order finding that a change in point of diversion or appropriation will result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050 within 15 days of receipt of the proposed order. Notwithstanding 690-002-0175, if the applicant files a notification of intent to pursue approval of the transfer under 690-380-5030 to 690-380-5050, the deadline for filing exceptions to the proposed order shall be 30 days after the Department provides notice to the parties that the transfer does not meet the requirements of 690-380-5030 to 690-380-5050.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear, or fail to appear at a scheduled hearing, the Director may issue a final order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions, or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 690-137-0555, an agency representative may represent partnerships, corporations, associations, governmental subdivisions or public, or private organizations if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active-duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Will Davidson at 503-507-2749.

If you have questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.

Address any correspondence to: Oregon Water Resources Department, Transfer and Conservation Section, 725 Summer Street NE, Suite A, Salem OR 97301-1266.



Oregon

Tina Kotek, Governor

Water Resources Department

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December 15, 2023

VIA CERTIFIED MAIL AND E-MAIL

Applicant

RANDAL AEBI
PO BOX 762
MCMINNVILLE, OR 97128

SUBJECT: Water Right Transfer Application T-13674

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-1367413674. 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.

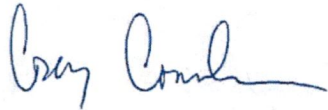
A public notice is being published in the Department's weekly publication and in the News-Register, McMinnville newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department 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 corey.a.courchane@water.oregon.gov or (503) 979-3917, if I may be of assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Corey Courchane".

Corey Courchane
Allocation of Conserved Water
Transfer and Conservation Section

cc: Transfer Application file T-1367413674
Joel M. Plahn, District 22 Watermaster (*via e-mail*)
William E. McGill, Agent for the applicant (*via e-mail*)

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