

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-14063, Clackamas County)	PROPOSING APPROVAL OF A CHANGE IN
)	PLACE 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

U.S. FOREST SERVICE
MT. HOOD NATIONAL FOREST
70220 E HWY 26
ZIGZAG, OR 97049

Findings of Fact

1. On August 1, 2022, U.S. FOREST SERVICE, MT. HOOD NATIONAL FOREST filed an application to change the place of use under Certificate 88726. The Department assigned the application number T-14063.
2. Notice of the application for transfer was published on August 9, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. Transfer Application T-14063 describes the delivery system as "Water is withdrawn from the springs and delivered to a Day Tank. Two 135 gpm, high-head, multi-stage pumps deliver water through a 4-inch diameter, extra-strength, steel pipe to the cartridge filters/chlorination facilities at the maintenance buildings. The system has the following storage reservoirs: a 200,000-gallon buried concrete reservoir above the lodge; a 50,000-gallon buried concrete reservoir above the lodge; a 180,000-gallon buried concrete reservoir above the lodge for fire suppression; and, a 4,000-gallon buried concrete reservoir above Silcox Hut. Water is distributed to Timberline Lodge, Wy'East Day Lodge, Silcox Hut, Phlox Point Cabin, and Alpine Campground, along with appurtenant services for water use about the resort and ski area."

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 8, 2022, the Department’s Watermaster completed review of Transfer Application T-14063. The review indicates “Previous communication with the applicant's agent indicated that the springs listed on this certificate are no longer in use, and have been replaced by a well, HOOD 50023. While injury is not likely to result because the change was made several years ago, a transfer is still needed to authorize use of the well.” The Watermaster also indicated “A surface water to ground water transfer could be filed to address the issue above.”
5. On September 19, 2022, the Agent for the applicant submitted a revised table 2 more accurately describing the “to lands”.
6. On September 20, 2022, the Agent for the applicant submitted a new map matching the new table 2 “to lands”.
7. On May 3, 2023, the Department contacted the agent for the applicant regarding a deficiency, specifically the Watermaster’s review indicating a change in source. The Department requested the agent for the applicant provide clarifying documentation supporting the beneficial use of water from the authorized point of diversion described on Certificate 88726.
8. On August 9, 2023, the agent for the applicant submitted Quality Data forms from the Oregon Health Authority (OHA), which establish the beneficial use of the surface water point of diversion, satisfying the deficiency.
9. On January 8, 2024, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-14063 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of February 8, 2024, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination, noting a scrivener’s error in the description of the delivery system in Finding of Fact 3.
10. On January 24, 2024, the agent for the applicant requested to extend the date for completion of full beneficial use of the water to October 1, 2030.

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

Certificate: 88726 in the name of U.S. FOREST SERVICE MOUNT HOOD NATIONAL FOREST (perfected under Permit S-26057)
Use: COMMERCIAL USE
Priority Date: APRIL 7, 1959
Rate: 0.275 CUBIC FOOT PER SECOND
Source: TWO UNNAMED SPRINGS, tributary to SANDY RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	9 E	WM	7	SE SW	500 FEET NORTH AND 2840 FEET WEST FROM THE SE CORNER OF SECTION 7

Authorized Place of Use:

COMMERCIAL USE				
Twp	Rng	Mer	Sec	Q-Q
3 S	9 E	WM	6	SE SE

12. Transfer Application T-14063 also proposes to change the place of use of the right to:

COMMERCIAL USE
TIMBERLINE SKI AREA SPECIAL USE PERMIT BOUNDARY US FOREST SERVICE, MT. HOOD NATIONAL FOREST AND ALPINE CAMPGROUND, U.S. FOREST SERVICE, MT. HOOD NATIONAL FOREST

Transfer Review Criteria (OAR 690-380-4010)

- 13. 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.
- 14. 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-14063.
- 15. The proposed change, as conditioned, would not result in enlargement of the right.
- 16. The proposed change, as conditioned, would not result in injury to other water rights.
- 17. All other application requirements are met.

Determination and Proposed Action

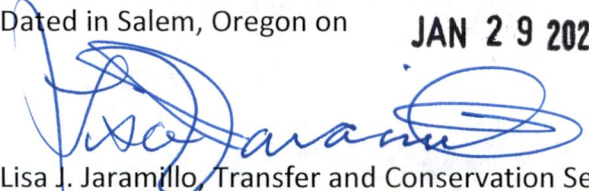
The change in place of use proposed in Transfer Application T-14063 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-14063 is approved, the final order will include the following:

- 1. *The change in place of use proposed in Transfer Application T-14063 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 88726 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 Certificate 88726 is cancelled. A new certificate will be issued describing the portion of the right not affected by this transfer.*
- 5. *Water shall be acquired from the same source of surface water as the original point of diversion.*

6. *The former place of use of the transferred right shall no longer receive water under the right.*
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 diversion (new and existing).*
 - b. *The water user shall maintain the meter or measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device 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, 2030**. 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.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on **JAN 29 2024**


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 questions about the information in this document, you may reach me at 503-979-3129 or arla.l.davis@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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January 29, 2024

VIA CERTIFIED MAIL AND E-MAIL

Applicant

U.S. FOREST SERVICE
MT. HOOD NATIONAL FOREST
70220 E HWY 26
ZIGZAG, OR 97049

SUBJECT: Water Right Transfer Application T-14063

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-14063. 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 don't hesitate to contact me at 503-979-3129 or arla.l.davis@water.oregon.gov, if I may be of assistance.

Sincerely,

Arla L Davis

Arla L Davis
Transfer Specialist
Transfer and Conservation Section

cc: T-14063
Amy J. Landvoigt, District 20 Watermaster (*via e-mail*)
Jeanne Boatwright, Agent for the applicant (*via e-mail*)

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