

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13854, Yamhill County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF DIVERSION, A
)	CHANGE IN POINTS OF DIVERSION AND A
)	CHANGE IN PLACES 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

SARBANAND ENTERPRISES
786 ROAD 188
DELANO, CA 93215

Findings of Fact

1. On October 25, 2021, SARBANAND ENTERPRISES LLC filed an application for an additional point of diversion, to change the points of diversion and to change the places of use under Certificates 53093 and 66607. The Department assigned the application number T-13854.
2. Notice of the application for transfer was published on November 9, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 20, 2023, the Department approved Allocation of Conserved Water Application CW-132, recorded under Special Order Volume 129, Pages 83-91. Certificate 66607 was cancelled, and the Department subsequently issued Certificate 97356. The Department will reference Certificate 97356 in this transfer.
4. On August 12, 2024, the Department sent a copy of the draft Preliminary Determination to the applicant, proposing to approve Transfer Application T-13854. The draft Preliminary Determination cover letter provided a deadline of September 12, 2024 for the applicant to respond and submit the required information. 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.

5. On August 14, 2024, the applicant requested additional time to complete beneficial use of the water, pursuant to OAR 690-380-5140(3). The applicant needs until October 1, 2026, to obtain sign off from the Oregon Department of Fish and Wildlife on the required fish screen.

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

Certificate: 53093 in the name of R. L. WALKER FARMS, INC. by DON L. WALKER, PRESIDENT (perfected under Permit S-46660)

Use: IRRIGATION OF 43.1 ACRES

Priority Date: DECEMBER 14, 1981

Rate: 0.54 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, 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.

Source: SOUTH YAMHILL RIVER a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	5 W	WM	35	SE NW	37	NORTH POD - 2360 FEET SOUTH AND 2950 FEET WEST FROM THE NE CORNER OF SECTION 35

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
5 S	5 W	WM	26	SE SW	6		2.7
5 S	5 W	WM	26	SE SW		70	3.4
5 S	5 W	WM	26	SW SE		70	4.9
5 S	5 W	WM	35	NW NE		70	3.5
5 S	5 W	WM	35	NW NE	4		5.3
5 S	5 W	WM	35	SW NE	5		2.1
5 S	5 W	WM	35	SW NE		37	5.2
5 S	5 W	WM	35	NE NW		70	3.0
5 S	5 W	WM	35	NE NW	3		7.5
5 S	5 W	WM	35	SE NW	2		2.1
5 S	5 W	WM	35	SE NW		37	3.4
TOTAL							43.1

7. Transfer Application T-13854 proposes to move the authorized point of diversion approximately 10.6 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	4 W	WM	14	SW SE	79	POD 1 - 2400 FEET NORTH AND 2360 FEET WEST FROM THE SE CORNER OF DLC 79

8. Transfer Application T-13854 also proposes an additional point of diversion approximately 10.9 miles downstream at:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	4 W	WM	14	NW NE	79	POD 2 - 1100 FEET SOUTH AND 2130 FEET WEST FROM THE NE CORNER OF SECTION 14

9. Transfer Application T-13854 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	4 W	WM	13	NW SW	79	0.1
4 S	4 W	WM	13	SW SW	79	8.0
4 S	4 W	WM	13	SW SW	79	2.0
4 S	4 W	WM	14	NW NE	79	1.0
4 S	4 W	WM	14	SW NE	79	10.4
4 S	4 W	WM	14	SE NE	79	0.1
4 S	4 W	WM	14	NE SE	79	6.8
4 S	4 W	WM	14	NW SE	79	2.8
4 S	4 W	WM	14	SE SE	79	11.9
TOTAL						43.1

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

Certificate: 97356 in the name of R. L. WALKER FARMS, INC. (perfected under Permit S-18862)

Use: IRRIGATION OF 32.9 ACRES

Priority Date: JULY 23, 1945

Rate: 0.41 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, 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: SOUTH YAMHILL RIVER, tributary of the YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	5 W	WM	35	SW SW	MIDDLE POD - 1050 FEET NORTH AND 300 FEET EAST FROM THE SW CORNER OF SECTION 35

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
5 S	5 W	WM	35	NE NE		70	0.2
5 S	5 W	WM	35	NE NE	6		1.6
5 S	5 W	WM	36	NW NW		70	13.2
5 S	5 W	WM	36	NW NW	4		17.0
5 S	5 W	WM	36	SW NW		68	0.9
TOTAL							32.9

11. Transfer Application T-13854 proposes to move the authorized point of diversion approximately 11.1 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	4 W	WM	14	SW SE	79	POD 1 - 2400 FEET NORTH AND 2360 FEET WEST FROM THE SE CORNER OF DLC 79

12. Transfer Application T-13854 also proposes an additional point of diversion approximately 11.5 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	4 W	WM	14	NW NE	79	POD 2 - 1100 FEET SOUTH AND 2130 FEET WEST FROM THE NE CORNER OF SECTION 14

13. Transfer Application T-13854 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	4 W	WM	14	SE SE	79	0.2
4 S	4 W	WM	23	NE NE	79	18.0
4 S	4 W	WM	23	SE NE	79	0.5
4 S	4 W	WM	24	NW NW	79	13.8
4 S	4 W	WM	24	SW NW	79	0.4
TOTAL						32.9

14. 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 690-380-0100(14), OAR 690-380-4010(2), OAR 690-380-2110(2), and OAR 690-380-2200]

15. Water has been used within the five-year period prior to submittal of Transfer Application T-13854 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.
16. A water delivery system sufficient to use the full amount of water allowed under the existing rights was present within the five-year period prior to submittal of Transfer Application T-13854.
17. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
18. The proposed points of diversion divert water from the same source of surface water as the authorized points of diversion, as required by OAR 690-380-2110(2).
19. The proposed changes, as conditioned, would not result in enlargement of the right.

20. The proposed changes, as conditioned, would not result in injury to other existing water rights.
21. All other application requirements are met.

Determination and Proposed Action

The additional point of diversion and the change in points of diversion and places of use proposed in Transfer Application T-13854 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-13854 is approved, the final order will include the following:

- 1. The additional point of diversion and the change in points of diversion and change in places of use proposed in Transfer Application T-13854 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 53093 and 97356 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 points of diversion or the new places of use.*
- 4. Water right Certificates 53093 and 97356 are cancelled. A new certificate will be issued describing that portion of Certificate 97526 not affected by this transfer.*
- 5. Under Certificate 53093, the quantity of water diverted at the new points of diversion (POD 1 and POD 2) shall not exceed the quantity of water lawfully available at the original point of diversion (NORTH POD).*
- 6. Under Certificate 97536, the quantity of water diverted at the new points of diversion (POD 1 and POD 2) shall not exceed the quantity of water lawfully available at the original points of diversion (MIDDLE POD).*
- 7. Water shall be acquired from the same source of surface water as the original points of diversion.*
- 8. The former place of use of the transferred rights shall no longer receive water under the rights.*
- 9. 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.

10. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2026**. 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.*
11. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on

DEC 11 2024



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
IVAN GALL, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Kim French. If you have questions about the information in this document, you may reach me at 503 979-9607 or Kim.R.French@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. For more information contact the Oregon State Bar at 1-800-452-8260, the Oregon Military Department at 971-355-4420, 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.

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

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone 503 986-0900

Fax 503 986-0904

www.oregon.gov/owrd

December 11, 2024

VIA CERTIFIED MAIL AND E-MAIL

SARBANAND ENTERPRISES LLC

786 RD 188

DELANO, CA 93215

SUBJECT: Water Right Transfer Application T-13854

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13854. 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 McMinnville News Register 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 don't hesitate to contact me at 503 979-9607 or Kim.R.French@water.oregon.gov, if I may be of assistance.

Sincerely,

Kim French

Transfer Specialist

Transfer and Conservation Section

cc: Transfer Application file T-13854
Joel M. Plahn, District 22 Watermaster (*via e-mail*)
Kim Grigsby, Agent for the applicant (*via e-mail*)

encs