

# Instream Transfer

Name Robert RussellAddress P.O. Box 1  
Eagle Point, OR 97524  
rrussell1950@aol.comChange in USE, POUDate Filed 2-14-2022Initial notice date 2-22-2022DPD issued date 4-20-22PD issued date 6/22/2022PD notice date 6/28/2022Date of FO 8/24/2022 Vol 125 Page 1088-43

C-Date \_\_\_\_\_

COBU due date \_\_\_\_\_

COBU Received date \_\_\_\_\_

Certificate issued \_\_\_\_\_

## DESCRIPTION OF WATER RIGHT(s)

Name of Stream Little Butte CreekTrib. of Rogue RiverUse Power Development County Jackson

Quantity of water (CFS) \_\_\_\_\_ No. of Acres \_\_\_\_\_

Name of ditch \_\_\_\_\_

App# Decree Per # \_\_\_\_\_ Cert # 86767 PR Date 1872

App# \_\_\_\_\_ Per # \_\_\_\_\_ Cert # \_\_\_\_\_ PR Date \_\_\_\_\_

App# \_\_\_\_\_ Per # \_\_\_\_\_ Cert # \_\_\_\_\_ PR Date \_\_\_\_\_

App# \_\_\_\_\_ Per # \_\_\_\_\_ Cert # \_\_\_\_\_ PR Date \_\_\_\_\_

App# \_\_\_\_\_ Per # \_\_\_\_\_ Cert # \_\_\_\_\_ PR Date \_\_\_\_\_

FEES PAID		
Date	Amount	Receipt #
2-14-2022	\$2,865.00	CA0034

FEES REFUNDED		
Date	Amount	Receipt #

Assignments: \_\_\_\_\_

Irrigation District \_\_\_\_\_

Agent Chrysten Rivard, TU - chrysten.rivard@tu.org

CWRE \_\_\_\_\_

CC's list City of Eagle Point ; Jackson County☐ - Oversized map - Location \_\_\_\_\_





**Oregon**  
Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

**AUG 24 2022**

DATE: \_\_\_\_\_

**Applicant**

Robert Russell

PO Box 1

Eagle Point, Oregon 97524

rrussell1950@aol.com

**Agent**

Trout Unlimited (TU)

633 Iowa Street

Ashland, Oregon 97520

chrysten.rivard@tu.org

SUBJECT: Instream Transfer Application T-13920

Enclosed is a copy of the final order approving your instream water right transfer application and copy of the remaining right certificate and confirming instream certificate.

I want to express appreciation for your participation in this program and cooperation in helping to improve streamflows for fish and aquatic life.

Please do not hesitate to contact me at [Sarah.A.Henderson@water.oregon.gov](mailto:Sarah.A.Henderson@water.oregon.gov) or 503-979-9872 if I may be of assistance.

Sincerely,

*Sarah Henderson*

Sarah Henderson

Flow Restoration Coordinator

Transfer and Conservation Section

cc: Transfer Application file T-13920  
Shavon Haynes, District 13 Watermaster (via e-mail)

encs



BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE  
STATE OF OREGON

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A CHANGE IN
T-13920, Jackson County	)	PLACE OF USE AND CHARACTER OF USE

**Authority**

ORS 540.505 to 540.580 establishes 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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

**Applicant**

Robert Russell  
PO Box 1  
Eagle Point, Oregon 97524  
[rrussell1950@aol.com](mailto:rrussell1950@aol.com)

**Agent**

Trout Unlimited (TU)  
633 Iowa Street  
Ashland, Oregon 97520  
[chrysten.rivard@tu.org](mailto:chrysten.rivard@tu.org)

**Findings of Fact**

1. On February 14, 2022, Robert Russell and TU filed an application to change a portion of the place of use and character of use under Certificate 86767 to instream use. The Department assigned the application number T-13920.
2. Notice of the application for transfer was published on February 22, 2022, pursuant to OAR 690-380-4000. No comments were received by the comment deadline, March 24, 2022. Consistent with land use requirements, notice of the intent to file the instream transfer application was provided by the applicant to Jackson County Planning Department and City of Eagle Point Public Works. Additionally, the Department provided notification of the proposed action to these local governments upon receipt of Transfer Application T-13920.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.



4. On April 20, 2022, the Department emailed a copy of the draft Preliminary Determination proposing to approve Instream Transfer Application T-13920 to the applicant and the agent. The draft Preliminary Determination cover letter set forth a deadline of May 19, 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.
5. On June 22, 2022, the Department issued a Preliminary Determination proposing to approve Instream Transfer T-13920 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on June 28, 2022, and in the Medford Mail Tribune newspaper on June 30, 2022, and July 7, 2022, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

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

**Certificate:** 86767 in the name of Robert E. Russell and Deborah S. Russell (confirmed by Little Butte Creek Decree of record at Salem, in the Order Record of the Water Resources Director in Volume 3, at Page 1)

**Use:** Power Development

**Season of Use:** April 1 through March 31

**Priority Date:** 1872

**Quantity:** **Limit:** The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 6.63 Cubic Feet per Second (CFS) from April 1 through October 31 and 8.4 CFS from November 1 through March 31 of each year, or its equivalent in case of rotation, measured at the point of diversion.

**Source:** Little Butte Creek, a tributary to Rogue River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	1 W	WM	35	SW SW	90 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 35

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q
36 S	1 W	WM	3	NE NE

7. A total of 2814.19 acre-feet of water from April 1 through October 31 and 2515.83 acre-feet of water from November 1 through March 31 may be beneficially used annually under the existing right.
8. Application T-13920 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.



9. Application T-13920 proposes to change the place of use of the right to a point at T35S, R1W, WM, Section 35 in the SW SW.
10. The applicant proposes the quantities of water to be transferred instream be protected as follows:

Period	Rate (cfs)	Volume (acre-feet)
November 1 through March 31	8.40	2515.83
April 1 through October 31	6.63	2814.19

11. The applicant has requested that any instream water right established as a result of this instream transfer be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant has also requested that any instream water rights established as a result of this instream transfer replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date.

***Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)***

12. The portion of the right proposed for transfer was leased instream under IL-1608. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
13. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Application T-13920.
14. The quantities to be protected instream are as follows:  
Little Butte Creek, tributary to Rogue River

**Instream Point:** At the POD (as described below)

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	1 W	WM	35	SW SW	90 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 35

Certificate	Priority Date	Instream Rate (CFS)	Period Protected Instream
86767	1872	6.63	April 1 through October 31
		8.40	November 1 through March 31

15. The proposed change would not result in enlargement of the right.



16. The proposed change would not result in injury to other water rights.
17. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
18. The protection of flows at the authorized point of diversion is appropriate, considering:
  - a) The instream water right begins at the recorded point of diversion;
  - b) The location of confluences with other streams downstream of the point of diversion;
  - c) There are known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - d) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the point of the instream water right.
19. Within the proposed instream protection on Little Butte Creek, there is an existing instream water rights established under ORS 537.348 (instream transfer process) for the purpose of maintaining instream flow for fisheries enhancement. There is also a pending instream water right application IS-88945, filed by the Oregon Department of Fish and Wildlife pursuant to ORS 537.341 (state agency application process), with the Department to establish an instream water right on Little Butte Creek for the purposes of conservation, maintenance and enhancement of aquatic and fish life, wildlife, and fish and wildlife habitat.
20. Any instream water right established as a result of this instream transfer will be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). Any instream water right established as a result of this instream transfer will replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date.
21. The total monthly quantities of water to be protected under the existing and proposed instream right at the point will provide for a beneficial purpose and do not exceed the estimated average natural flow.

#### Conclusions of Law

The changes in character of use and place of use to instream use proposed in application T-13920 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075.



Now, therefore, it is ORDERED:

1. The changes in character of use and place of use to instream use proposed in application T-13920 are approved.
2. Water right certificate 86767 is cancelled. A new certificate confirming the instream water right shall be issued. A new certificate will be issued describing that portion of the right not affected by this transfer.
3. The water user shall assist in maintaining the existing measurement device at the original point of diversion and at the gage 14347800 and shall make such improvements as may be required by the Department.
4. The instream water right shall provide for the protection of streamflows for a point located at T35S, R1W, WM, Section 35 in the SW SW.
5. The quantities of water to be protected under the instream water right are:

**Instream Point:** At the POD (as described below)

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	1 W	WM	35	SW SW	90 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 35

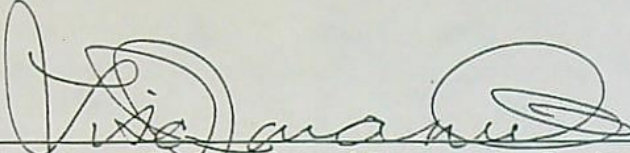
Certificate	Priority Date	Instream Rate (CFS)	Period Protected Instream
86767	1872	6.63	April 1 through October 31
		8.40	November 1 through March 31

6. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion.
7. The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.
8. 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 86767 and any related decree.



9. The former place of use of the transferred water shall no longer receive water as part of this right.

Dated at Salem, Oregon this day AUG 24 2022.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
Tom M. Byler, Director, Oregon Water Resources Department

Mailing date: AUG 25 2022



STATE OF OREGON

COUNTY OF JACKSON

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

STATE OF OREGON  
WATER RESOURCES DEPARTMENT

confirms the right to use the waters of Little Butte Creek, for instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.

This right was confirmed by decree of the Circuit Court of the State of Oregon for Jackson County. The date of priority is 1872. The amount of water to which this right is entitled is limited to an amount actually used beneficially and shall not exceed 6.63 Cubic Feet per Second (CFS) from April 1 through October 31 and 8.4 CFS from November 1 through March 31 of each year, or its equivalent in case of rotation, measured at the point of diversion.

The description of the stream reach in which flows are to be maintained is as follows:

**Instream Point:** At the POD (as described below)

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	1 W	WM	35	SW SW	90 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 35

Certificate	Priority Date	Instream Rate (CFS)	Period Protected Instream
86767	1872	6.63	April 1 through October 31
		8.40	November 1 through March 31

The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new instream water right.

The right is subject to all other terms and conditions of Certificate 86767, and any related decree.

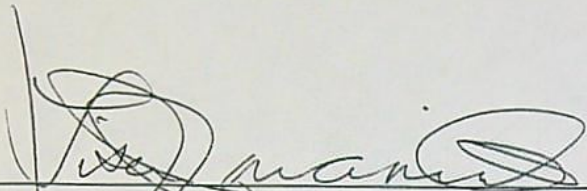
This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.



This certificate is issued to confirm a change in use and place of use approved by an order of the Water Resources Director recorded in Special Order Volume 125, Page 1238, approving Transfer T-13920, and along with Certificate 96389 supersedes Certificate 86767, State Record of Water Right Certificates.

**AUG 24 2022**

WITNESS the signature of the Water Resources Director, affixed \_\_\_\_\_.

A handwritten signature in black ink, appearing to read "Lisa J. Jaramillo", written over a horizontal line.

Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
THOMAS M. BYLER, Director  
Oregon Water Resources Department



## STATE OF OREGON

## COUNTY OF JACKSON

## CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

ROBERT E. RUSSELL AND DEBORAH S. RUSSELL  
402 ROYAL  
EAGLE POINT OR 97524

confirms the right to use the waters of the LITTLE BUTTE CREEK, a tributary to the ROGUE RIVER for POWER DEVELOPMENT.

This right was confirmed by decree of the Circuit Court of the State of Oregon for Jackson County. The decree is of record at Salem, in the Order Record of the Water Resources Director in Volume 3, at Page 1. The date of priority is 1872.

The amount of water to which this right is entitled is limited to an amount actually used beneficially and shall not exceed 16.0 CFS FROM APRIL 1 THROUGH OCTOBER 31 and 16.0 CUBIC FEET PER SECOND (CFS) FROM NOVEMBER 1 THROUGH MARCH 31 of each year, or its equivalent in case of rotation, measured at the point of diversion.

The point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	1 W	WM	35	SW SW	90 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 35

A description of the place of use to which this right is appurtenant is the Butte Creek or Daley Flouring Mill at Eagle Point, Oregon, located as follows:

POWER DEVELOPMENT				
Twp	Rng	Mer	Sec	Q-Q
36 S	1 W	WM	3	NE NE

This certificate describes that portion of the water right confirmed by Certificate 86767, State Record of Water Right Certificates, NOT modified by the provisions of an order of the Water Resources Director entered

AUG 24 2022

approving Transfer Application T-13920.

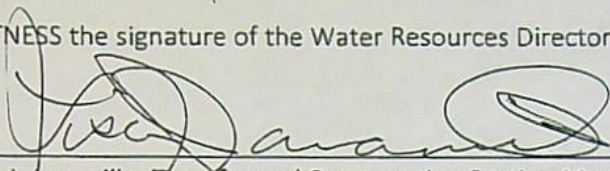
The issuance of this superseding certificate does not confirm the status of the water right in regard to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.



The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described and is subject to all other conditions and limitations contained in said decree.

AUG 24 2022

WITNESS the signature of the Water Resources Director, affixed \_\_\_\_\_.

A handwritten signature in black ink, appearing to read "Lisa J. Jaramillo", written over a horizontal line.

Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
THOMAS M. BYLER, Director  
Oregon Water Resources Department



# WATER RIGHT TRANSFER COVER SHEET

Transfer: T- 13920

Transfer Specialist: *Sarah*

Transfer Type: Instream Transfer

<b>Applicant:</b> ROBERT E. RUSSELL PO BOX 1 EAGLE POINT, OR 97524 Email: _____ Phone: _____		<b>Agent:</b> <input type="checkbox"/> N/A CHRYSTEN RIVARD 633 IOWA ST ASHLAND, OR 97520 Email: _____ Phone: _____	
<b>Irrigation District:</b> <input type="checkbox"/> N/A Email: _____		<b>CWRE:</b> <input type="checkbox"/> N/A Email: _____	
<b>Affected Local Gov'ts:</b> <input type="checkbox"/> N/A City Of Eagle Point Jackson County Email: _____		<b>Affected Tribal Gov't:</b> <input type="checkbox"/> N/A UNAVAILABLE Email: _____	
<b>Current Landowner if other than Applicant:</b> <input type="checkbox"/> N/A Email: _____		<b>Receiving Landowner:</b> <input type="checkbox"/> N/A Email: _____	

## Water Rights Affected

File Marked	App. File # or Decree Name	Permit	Certificate	RR/CR Needed	RR/CR Nos.
<input type="checkbox"/>	Decree		86767	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>				<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>				<input type="checkbox"/> Yes <input type="checkbox"/> No	

## Key Dates & Initial Actions:

Rec'd: February 14, 2022	Proposed Action(s): PLACE OF USE; USE	
Fees Pd: 2865.00	WM District: 13	ODFW District:
Initial Public Notice: February 22, 2022	WM Review sent: <i>yes</i>	ODFW Review sent:
Acknowledgement Letter Sent <input checked="" type="checkbox"/>		GW Review sent: <input checked="" type="checkbox"/> N/A
County sent cc: of Ack Letter <input checked="" type="checkbox"/>	BOR notified (date): <input checked="" type="checkbox"/> N/A	
Newspaper quote requested: <i>yes</i>	Request for news \$ sent: <i>yes 5/4/22</i>	News \$ received: <i>5/9/22</i>
Request to publish sent:	Affidavit of publication received:	Last day of publication:

Document	Drafted	Peer Review	Changes Made	Coordinator	Changes Made	Signature Bin	Signature Date
DPD	Date: _____ Initials: <i>Sarah</i>	Date: _____ Initials: <i>Corey</i>	Date: _____ Initials: <i>Sarah</i>	Date: _____ Initials: <i>Sarah</i>	Date: _____ Initials: _____	CW Sent: <i>4/20/22</i>	N/A
PD	Date: _____ Initials: <i>Sarah</i>	Date: _____ Initials: <i>Corey</i>	Date: _____ Initials: <i>Sarah</i>	Date: _____ Initials: <i>Sarah</i>	Date: _____ Initials: <i>Sarah</i>	Date: <i>6/15/22</i>	Date: <i>6/22/2022</i>
FO	Date: _____ Initials: <i>Sarah</i>	Date: _____ Initials: <i>Corey</i>	Date: _____ Initials: <i>Sarah</i>	Date: _____ Initials: <i>Sarah</i>	Date: _____ Initials: <i>Sarah</i>	Date: <i>8/15/22</i>	Date: <i>8/24/2022</i>

Special Issues: \_\_\_\_\_

Special Order Volume: Vol. *125* Pages *688-43*



## AFFIDAVIT OF PUBLICATION

\*\*\*\* THIS IS NOT A BILL \*\*\*\*

On Behalf of:  
Oregon Water Resources Department  
725 Summer Street NE  
Suite A  
SALEM, OR 97301

STATE OF OREGON COUNTY OF JACKSON:

I, Kristy Gallon, being first duly sworn, depose and say that I am the principal clerk of Mail Tribune, a newspaper of general circulation, as defined by ORS 193.010 and 193.020; printed at Medford in the aforesaid county and state; that the public notice, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for 2 successive and consecutive insertion(s) in the following issues 6/30/2022, 7/7/2022 (HERE SET FORTH DATES OF ISSUE).

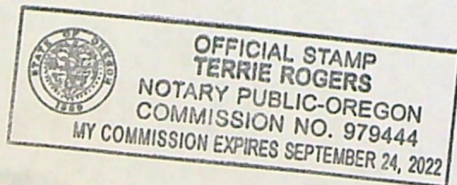
Kristy Gallon  
Affiant

Subscribed and sworn to before me this

15<sup>th</sup> day of July, 2022.

Lennie T. Rogers  
Notary State of Oregon County of Jackson

My commission expires Sept 24 2022



Rosebud Media - Mail Tribune  
111 N Fir St, Medford, OR 97501

Publication Cost: \$205.04 | T-13920  
Ad No: 9858 Customer No: 103032

Received by OWRD

JUL 18 2022

Salem, OR

## COPY OF ADVERTISEMENT

### Notice of Preliminary Determination for Water Right Transfer T- 13920

T-13920 filed by Robert Russell, PO Box 1, Eagle Point, OR 97524, proposes changes in place of use and character of use under Certificate 86767. The right allows the use of 6.63 cfs from April 1 through October 31 and 8.4 cfs from November 1 through March 31 of each year from Little Butte Creek in Sec. 35, T35S, R1W, W.M. for power development in Sec. 3, T36S, R1W, W.M. The applicant proposes to create an instream use in Little Butte Creek at the point of diversion. The Water Resources Department proposes to approve the transfer, based on the requirements of ORS Chapter 540, OAR 690-380-5000 and OAR 690-077-0075.

Any person may file, jointly or severally, a protest or standing statement within 30 days after the last date of newspaper publication of this notice 07/07/2022. Call (503) 979-9931 to obtain additional information. If no protests are filed, the Department will issue a final order consistent with the preliminary determination

June 30 and July 7, 2022



U.S. Postal Service™  
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|--|----------|
| <input type="checkbox"/> Return Receipt (hardcopy)           | \$ _____ |
| <input type="checkbox"/> Return Receipt (electronic)         | \$ _____ |
| <input type="checkbox"/> Certified Mail Restricted Delivery  | \$ _____ |
| <input type="checkbox"/> Adult Signature Required            | \$ _____ |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$ _____ |

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ROBERT RUSSELL  
PO BOX 1  
EAGLE POINT, OR 97524





**Oregon**  
Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

DATE: JUN 22 2022

VIA CERTIFIED MAIL AND E-MAIL

**Applicant**

Robert Russell

PO Box 1

Eagle Point, Oregon 97524

[rrussell1950@aol.com](mailto:rrussell1950@aol.com)

**Agent**

Trout Unlimited (TU)

633 Iowa Street

Ashland, Oregon 97520

[chrysten.rivard@tu.org](mailto:chrysten.rivard@tu.org)

SUBJECT: Instream Transfer Application T-13920

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve instream transfer application T-13920. 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 Medford Mail Tribune 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 503-979-9872 or [sarah.a.henderson@water.oregon.gov](mailto:sarah.a.henderson@water.oregon.gov) 503-986-0886 or [Patrick.K.Starnes@wrdd.state.or.us](mailto:Patrick.K.Starnes@wrdd.state.or.us) if I may be of assistance.

Sincerely,

Sarah Henderson

Transfer and Conservation Section

cc: Transfer Application file T-13920  
Shavon Haynes, District 13 Watermaster (via e-mail)

enc



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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13920, Jackson County	)	PROPOSING APPROVAL OF A CHANGE IN
	)	PLACE OF USE AND CHARACTER OF USE

**Authority**

ORS 540.505 to 540.580 establishes 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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

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**Agent**

Trout Unlimited (TU)  
633 Iowa Street  
Ashland, Oregon 97520  
[chrysten.rivard@tu.org](mailto:chrysten.rivard@tu.org)

**Findings of Fact**

1. On February 14, 2022, Robert Russell and TU filed an application to change a portion of the place of use and character of use under Certificate 86767 to instream use. The Department assigned the application number T-13920.
2. Notice of the application for transfer was published on February 22, 2022, pursuant to OAR 690-380-4000. No comments were received by the comment deadline, March 24, 2022.
3. Consistent with land use requirements, notice of the intent to file the instream transfer application was provided by the applicant to Jackson County Planning Department and City of Eagle Point Public Works. Additionally, the Department provided notification of the proposed action to these local governments upon receipt of Transfer Application T-13920.
4. On April 20, 2022, the Department emailed a copy of the draft Preliminary Determination proposing to approve Instream Transfer Application T-13920 to the applicant and the agent. The draft Preliminary Determination cover letter set forth a deadline of May 19,

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.
--



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.

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

**Certificate:** 86767 in the name of Robert E. Russell and Deborah S. Russell (confirmed by Little Butte Creek Decree of record at Salem, in the Order Record of the Water Resources Director in Volume 3, at Page 1)

**Use:** Power Development

**Season of Use:** April 1 through March 31

**Priority Date:** 1872

**Quantity:** **Limit:** The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 6.63 Cubic Feet per Second (CFS) from April 1 through October 31 and 8.4 CFS from November 1 through March 31 of each year, or its equivalent in case of rotation, measured at the point of diversion.

**Source:** Little Butte Creek, a tributary to Rogue River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	1 W	WM	35	SW SW	90 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 35

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q
36 S	1 W	WM	3	NE NE

6. A total of 2814.19 acre-feet of water from April 1 through October 31 and 2515.83 acre-feet of water from November 1 through March 31 may be beneficially used annually under the existing right.
7. Application T-13920 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
8. Application T-13920 proposes to change the place of use of the right to a point at T35S, R1W, WM, Section 35 in the SW SW.
9. The applicant proposes the quantities of water to be transferred instream be protected as follows:

Period	Rate (cfs)	Volume (acre-feet)
November 1 through March 31	8.40	2515.83
April 1 through October 31	6.63	2814.19



10. The applicant has requested that any instream water right established as a result of this instream transfer be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant has also requested that any instream water rights established as a result of this instream transfer replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date.

***Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)***

11. The portion of the right proposed for transfer was leased instream under IL-1608. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
12. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Application T-13920.
13. The quantities to be protected instream are as follows:  
Little Butte Creek, tributary to Rogue River

**Instream Point:** At the POD (as described below)

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	1 W	WM	35	SW SW	90 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 35

Certificate	Priority Date	Instream Rate (CFS)	Period Protected Instream
86767	1872	6.63	April 1 through October 31
		8.40	November 1 through March 31

14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.
16. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
17. The protection of flows at the authorized point of diversion is appropriate, considering:
- a) The instream water right begins at the recorded point of diversion;
  - b) The location of confluences with other streams downstream of the point of diversion;



- c) There are known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - d) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the point of the instream water right.
18. Within the proposed instream protection on Little Butte Creek, there is an existing instream water rights established under ORS 537.348 (instream transfer process) for the purpose of maintaining instream flow for fisheries enhancement. There is also a pending instream water right application IS-88945, filed by the Oregon Department of Fish and Wildlife pursuant to ORS 537.341 (state agency application process), with the Department to establish an instream water right on Little Butte Creek for the purposes of conservation, maintenance and enhancement of aquatic and fish life, wildlife, and fish and wildlife habitat.
19. Any instream water right established as a result of this instream transfer will be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). Any instream water right established as a result of this instream transfer will replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date.
20. The total monthly quantities of water to be protected under the existing and proposed instream right at the point will provide for a beneficial purpose and do not exceed the estimated average natural flow.

#### **Determination and Proposed Action**

The changes in character of use and place of use to instream use proposed in application T-13920 appear to be consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

*If Transfer Application T-13920 is approved, the final order will include the following:*

1. *The changes in character of use and place of use to instream use proposed in application T-13920 are approved.*
2. *Water right certificate 86767 is cancelled. A new certificate confirming the instream water right shall be issued. A new certificate will be issued describing that portion of the right not affected by this transfer.*
3. *The water user shall assist in maintaining the existing measurement device at the original point of diversion and at the gage 14347800 and shall make such improvements as may be required by the Department.*



4. The instream water right shall provide for the protection of streamflows for a point located at T35S, R1W, WM, Section 35 in the SW SW.
5. The quantities of water to be protected under the instream water right are:

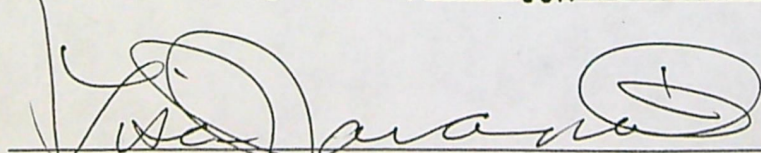
**Instream Point:** At the POD (as described below)

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	1 W	WM	35	SW SW	90 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 35

Certificate	Priority Date	Instream Rate (CFS)	Period Protected Instream
86767	1872	6.63	April 1 through October 31
		8.40	November 1 through March 31

6. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion.
7. The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.
8. 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 86767 and any related decree.
9. The former place of use of the transferred water shall no longer receive water as part of this right.

Dated at Salem, Oregon this day JUN 22 2022.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
Tom M. Byler, Director, Oregon Water Resources Department

This Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-979-9872 or Sarah.A.Henderson@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.*





Oregon  
Kate Brown, Governor

Water Resources Department  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
Fax (503) 986-0904

May 4, 2022

**Applicant**

Robert Russell  
PO Box 1  
Eagle Point, Oregon 97524  
[rrussell1950@aol.com](mailto:rrussell1950@aol.com)

**Agent**

Trout Unlimited (TU)  
633 Iowa Street  
Ashland, Oregon 97520  
[chrysten.rivard@tu.org](mailto:chrysten.rivard@tu.org)

SUBJECT: Water Right Transfer Application T-13920

Your water right transfer is ready for issuance of the Preliminary Determination, once the Department receives payment for publication of the newspaper notice.

**Items needed before the next phase of processing...**

At this time you need to:

1. submit a check for \$246.05 (to cover cost of publication of the notice), made out to the Oregon Water Resources Department.
2. **write "for T-13920 NOTICE" on the front of your check**, and
3. submit it with the tracking stub at the bottom of this letter.

Mail the check to 725 Summer St. NE, Suite A, Salem, OR 97301-1266, **no later than June 2, 2022.**

**What happens next...**

Shortly after receiving payment, the Department will issue the Preliminary Determination, initiate publication in the Medford Mail Tribune newspaper, and also publish the notice on the Department's weekly notice. Publication of the notice will initiate a protest period during 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.

**If we do not receive payment for newspaper notice by June 2, 2022, a Preliminary Determination may be issued denying the application as incomplete.**

Please do not hesitate to contact me at 503-979-9872 or [Sarah.A.Henderson@water.oregon.gov](mailto:Sarah.A.Henderson@water.oregon.gov), if I may be of assistance.

Sincerely,

Sarah Henderson  
Transfer and Conservation Section

cc: T- 13920

X-----

**Attached** is a check for \$246.05 (PCA #46118) for Newspaper Notice for Transfer T-13920 made out to Oregon Water Resources Department ( or WRD)

- **"for T-13920 NOTICE" written on front of check**

Mail to: Oregon Water Resources Department  
725 Summer St. NE, Suite A  
Salem, OR 97301-1266

Caseworker: Sarah Henderson



## HENDERSON Sarah A \* WRD

---

**From:** PHILLIPS Stacy H \* WRD  
**Sent:** Monday, May 9, 2022 2:16 PM  
**To:** Chrysten Rivard  
**Cc:** HENDERSON Sarah A \* WRD  
**Subject:** RE: T-13920 Newspaper Fee Request

Hello,

The amount of \$246.05 has been deducted from TU's account to pay for the newspaper notice for T-13920 in the Medford Mail Tribune.

Thanks,

Stacy H. Phillips

Restoration Program Technician  
725 Summer Street NE, Suite A, Salem, OR 97301  
Office: 503-986-0898 | Work Cell: 503-979-9948



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**From:** Chrysten Rivard <Chrysten.Rivard@tu.org>  
**Sent:** Monday, May 09, 2022 9:39 AM  
**To:** PHILLIPS Stacy H \* WRD <Stacy.H.PHILLIPS@water.oregon.gov>  
**Subject:** Re: T-13920 Newspaper Fee Request

Yes please! Thank you Stacy.

Get [Outlook for iOS](#)

---

**From:** PHILLIPS Stacy H \* WRD <Stacy.H.PHILLIPS@water.oregon.gov>  
**Sent:** Monday, May 9, 2022 7:46:45 AM  
**To:** Chrysten Rivard <Chrysten.Rivard@tu.org>  
**Subject:** RE: T-13920 Newspaper Fee Request

Good Morning Chrysten,

Were you wanting me to move forward with processing the newspaper payment from TU's account? If so, I need the confirmation from you that is what you would like to do.

Thanks,

Stacy H. Phillips

Restoration Program Technician  
725 Summer Street NE, Suite A, Salem, OR 97301  
Office: 503-986-0898 | Work Cell: 503-979-9948





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**From:** PHILLIPS Stacy H \* WRD  
**Sent:** Thursday, May 05, 2022 7:42 AM  
**To:** Chrysten Rivard <[Chrysten.Rivard@tu.org](mailto:Chrysten.Rivard@tu.org)>  
**Subject:** RE: T-13920 Newspaper Fee Request

Good Morning Chrysten,

I heard back from Abby. The current balance is \$1630.00. The last deposit was 4/25/2022.

Thanks,

Stacy H. Phillips

Restoration Program Technician  
725 Summer Street NE, Suite A, Salem, OR 97301  
Office: 503-986-0898 | Work Cell: 503-979-9948



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**From:** Chrysten Rivard <[Chrysten.Rivard@tu.org](mailto:Chrysten.Rivard@tu.org)>  
**Sent:** Wednesday, May 04, 2022 1:02 PM  
**To:** PHILLIPS Stacy H \* WRD <[Stacy.H.PHILLIPS@water.oregon.gov](mailto:Stacy.H.PHILLIPS@water.oregon.gov)>  
**Subject:** FW: T-13920 Newspaper Fee Request

Hi Stacy,

I requested payment earlier this week into our customer account to cover this fee (as well as an instream lease application that will come in soon). I am sure you haven't received the payment yet since it's so slow using paper checks. Do we have a current balance in the account?

Thanks!

---

**From:** HENDERSON Sarah A \* WRD <[Sarah.A.HENDERSON@water.oregon.gov](mailto:Sarah.A.HENDERSON@water.oregon.gov)>  
**Sent:** Wednesday, May 4, 2022 12:55 PM  
**To:** Chrysten Rivard <[Chrysten.Rivard@tu.org](mailto:Chrysten.Rivard@tu.org)>; Bob Russell <[rrussell1950@aol.com](mailto:rrussell1950@aol.com)>  
**Cc:** HENDERSON Sarah A \* WRD <[Sarah.A.HENDERSON@water.oregon.gov](mailto:Sarah.A.HENDERSON@water.oregon.gov)>; PHILLIPS Stacy H \* WRD <[Stacy.H.PHILLIPS@water.oregon.gov](mailto:Stacy.H.PHILLIPS@water.oregon.gov)>  
**Subject:** T-13920 Newspaper Fee Request

Hi Chrysten,

Attached is the newspaper fee request for the publication of Instream Transfer application T-13920 in the Medford Mail Tribune.

The amount of the publication will be \$246.05.



You and Stacy can work together to see how much is available in the Trout Unlimited Customer Account with the Department.

Please let me know if you have any questions or concerns.

Also, I will continue working through the ownership information and getting the preliminary determination ready.

Thank you.

Sarah

Sarah A. Henderson

Flow Restoration Program Coordinator  
Transfer and Conservation Section  
725 Summer St. NE, Suite A | Salem, OR 97301  
Work Cell 503-979-9872  
Email: [sarah.a.henderson@water.oregon.gov](mailto:sarah.a.henderson@water.oregon.gov)



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**NOTE:** OWRD offices re-open to the public on Monday, May 2, 2022. Given that many staff continue to work remotely or have job duties that take them into the field on a regular basis, availability of staff in the office is not guaranteed 8 a.m. - 5 p.m. every day. **Customers and visitors are encouraged to schedule an appointment in advance if they wish to meet in person with specific staff members.** Alternative methods for meeting, such as by phone or virtually via Teams, are also available.



## HENDERSON Sarah A \* WRD

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**From:** Chrysten Rivard <Chrysten.Rivard@tu.org>  
**Sent:** Wednesday, May 4, 2022 8:50 AM  
**To:** HENDERSON Sarah A \* WRD; Bob Russell  
**Cc:** Shavon Haynes (HaynesSL@jacksoncounty.org)  
**Subject:** RE: Draft Preliminary Determination for Instream T-13920  
**Attachments:** OAE Report.pdf; Map.pdf; Landowner Consent Form Notarized.pdf

Hi Sarah,

Please see the attached ownership and encumbrance report. I believe the notarized approval from the Butte Creek Mill Foundation that was submitted with the transfer application should be sufficient? I have attached that here again for your reference.

Warmly,  
Chrysten

---

**From:** HENDERSON Sarah A \* WRD [Sarah.A.HENDERSON@water.oregon.gov](mailto:Sarah.A.HENDERSON@water.oregon.gov)  
**Sent:** Monday, May 2, 2022 10:18 AM  
**To:** Chrysten Rivard [Chrysten.Rivard@tu.org](mailto:Chrysten.Rivard@tu.org); Bob Russell [rrussell1950@aol.com](mailto:rrussell1950@aol.com)  
**Cc:** Shavon Haynes ([HaynesSL@jacksoncounty.org](mailto:HaynesSL@jacksoncounty.org)) [HaynesSL@jacksoncounty.org](mailto:HaynesSL@jacksoncounty.org); HENDERSON Sarah A \* WRD [Sarah.A.HENDERSON@water.oregon.gov](mailto:Sarah.A.HENDERSON@water.oregon.gov)  
**Subject:** RE: Draft Preliminary Determination for Instream T-13920

Hi Chrysten,

Thank you for your input, I believe you are correct, I will omit the totals on that table.

I will also send for a quote from the newspaper, and send to you as soon as possible.

Sarah

### Sarah A. Henderson

Flow Restoration Program Coordinator  
Transfer and Conservation Section  
725 Summer St. NE, Suite A | Salem, OR 97301  
Work Cell 503-979-9872  
Email: [sarah.a.henderson@water.oregon.gov](mailto:sarah.a.henderson@water.oregon.gov)



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advance if they wish to meet in person with specific staff members. Alternative methods for meeting, such as by phone or virtually via Teams, are also available.

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**From:** Chrysten Rivard <Chrysten.Rivard@tu.org>

**Sent:** Monday, May 2, 2022 10:12 AM

**To:** HENDERSON Sarah A \* WRD <Sarah.A.HENDERSON@water.oregon.gov>; Bob Russell <rrussell1950@aol.com>

**Cc:** Shavon Haynes (HaynesSL@jacksoncounty.org) <HaynesSL@jacksoncounty.org>

**Subject:** RE: Draft Preliminary Determination for Instream T-13920

Hi Sarah,

I just have one correction for your consideration in the DPD. For item #8, I don't think it is appropriate to add the rates for the two seasons since they are not additive, but instead reflect different seasons of use (see below). Otherwise, please consider this email to reflect our concurrence with the proposed order.

I think that the Medford Mail Tribune is the most appropriate newspaper for publication of the PD. Can you please find out the cost so that I can assure we have adequate funds in our account?

I have requested the ownership information from a title company, but STILL have not received it. I will pass that along as soon as possible/

Thanks!  
Chrysten

*8. The applicant proposes the quantities of water to be transferred instream be protected as follows:*

<i>Period</i>	<i>Rate (cfs)</i>	<i>Volume (acre-feet)</i>
<i>November 1 through</i>	<i>8.40</i>	<i>2515.83</i>
<i>March 31</i>		
<i>April 1 through</i>	<i>6.63</i>	<i>2814.19</i>
<i>October 31</i>		
<i>Total</i>	<i>15.03</i>	<i>5330.02</i>

---

**From:** HENDERSON Sarah A \* WRD <Sarah.A.HENDERSON@water.oregon.gov>

**Sent:** Wednesday, April 20, 2022 3:43 PM

**To:** Chrysten Rivard <Chrysten.Rivard@tu.org>; Bob Russell <rrussell1950@aol.com>

**Cc:** Shavon Haynes (HaynesSL@jacksoncounty.org) <HaynesSL@jacksoncounty.org>; HENDERSON Sarah A \* WRD <Sarah.A.HENDERSON@water.oregon.gov>

**Subject:** Draft Preliminary Determination for Instream T-13920

Good Afternoon,

Attached is the Draft Preliminary Determination and Cover Letter proposing to approve Instream Transfer Application T-13920.

Please read the cover letter to see the next steps in the processing.

If you would like a hard copy mailed to you, let me know and I can send one out.

Also, let me know if you have any questions. The deadline for the next steps is May 19, 2022.





744 NE 7th Street  
(541)476-1171

**OWNERSHIP AND ENCUMBRANCES REPORT WITH GENERAL INDEX LIENS**  
Informational Report of Ownership and Monetary and Non-Monetary Encumbrances

To ("Customer"): Chrysten Rivard  
633 Iowa Street  
Ashland, OR 97520

Customer Ref.: \_\_\_\_\_  
Order No.: 470322081972  
Effective Date: April 28, 2022 at 08:00 AM  
Charge: \$300.00  
\$100.00

The information contained in this report is furnished by Ticor Title Company of Oregon (the "Company") as a real property information service based on the records and indices maintained by the Company for the county identified below. THIS IS NOT TITLE INSURANCE OR A PRELIMINARY TITLE REPORT FOR, OR COMMITMENT FOR, TITLE INSURANCE. No examination has been made of the title to the herein described property, other than as specifically set forth herein. Liability for any loss arising from errors and/or omissions is limited to the lesser of the charge or the actual loss, and the Company will have no greater liability by reason of this report. THIS REPORT IS SUBJECT TO THE LIMITATIONS OF LIABILITY STATED BELOW, WHICH LIMITATIONS OF LIABILITY ARE A PART OF THIS REPORT.

**THIS REPORT INCLUDES MONETARY AND NON-MONETARY ENCUMBRANCES.**

**Part One - Ownership and Property Description**

**Owner.** The apparent vested owner of property ("the Property") as of the Effective Date is:

Butte Creek Mill Foundation, an Oregon Nonprofit Corporation

**Premises.** The Property is:

**(a) Street Address:**

402 North Royal Avenue, Eagle Point, OR 97524

**(b) Legal Description:**

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF



**Part Two - Encumbrances**

**Encumbrances.** As of the Effective Date, the Property appears subject to the following monetary and non-monetary encumbrances of record, not necessarily listed in order of priority, including liens specific to the subject property and general index liens (liens that are not property specific but affect any real property of the named person in the same county):

**EXCEPTIONS**

**EXCEPTIONS AFFECTING PARCEL I:**

1. City Liens, if any, in favor of the City of Eagle Point.
2. Regulations, levies, liens, assessments, rights of way and easements of Rogue Valley Sewer Service District.
3. Regulations, including levies, liens, assessments, water and irrigation rights and easements for ditches and canals of the Eagle Point Irrigation District.
4. The subject property is under public, charitable, fraternal, or religious organization ownership and is exempt from ad valorem taxation. Any change in ownership prior to delivery of the assessment roll may result in tax liability.  
  
Tax Account No.: 1-020612-3  
Map No.: 36-1W-03-AA-04500
5. Any adverse claim based on the assertion that any portion of the subject land has been removed from or brought within the subject land's boundaries by the process of accretion or reliction or any change in the location of Little Butte Creek.
6. Any adverse claim based on the assertion that any portion of the subject land has been created by artificial means or has accreted to such portions so created, or based on the provisions of ORS 274.905 through 274.940.
7. Rights of the public; riparian owners and governmental bodies as to the use of the waters of Little Butte Creek and the natural flow thereof on and across that portion of the subject land lying below the high water line of said waterway.
8. Rights of the public and governmental agencies in and to any portion of said land lying within the boundaries of streets, roads, and highways.
9. Reservations, exceptions and provisions contained in the patent from the United States, and in the acts authorizing the issuance thereof.  
  
Recording Date: January 14, 1879  
Recording No: Volume 8, Page 316
10. Easement(s) for the purpose(s) shown below and rights incidental thereto as reserved in a document;  
  
Purpose: Right of way for pipeline purposes, and for water ditch or mill race known as Daley's Butte Creek Mill Ditch, and rights concerning the use of water and privileges in connection therewith  
Recording Date: July 5, 1912  
Recording No: Volume 96, Page 450



11. Easement(s) for the purpose(s) shown below and rights incidental thereto as reserved in a document;

Purpose: Right of way for a pipeline, and rights in connection therewith  
Recording Date: March 21, 1918  
Recording No: Volume 117, Page 123

12. Easement(s) for the purpose(s) shown below and rights incidental thereto as reserved in a document;

Purpose: Right of way for water ditch to J.J. Fryer  
Recording Date: March 21, 1918  
Recording No: Volume 117, Page 123

13. Easement(s) for the purpose(s) shown below and rights incidental thereto as reserved in a document;

Purpose: Right of way 10 feet in width  
Recording Date: September 16, 1953  
Recording No: Volume 385, Page 144

14. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Pacific Power & Light Company  
Purpose: Transmission and distribution of electricity, and for other purposes  
Recording Date: December 27, 1961  
Recording No: Volume 518, Page 348  
Affects: Specific location not disclosed of record

15. Boundary Line Agreement, including the terms and provisions thereof

Recording Date: July 31, 1972  
Recording No.: 72-09965

16. Any easements or rights of way for existing utilities or other rights of way over those portions of said Land lying within the public right of way vacated by resolution or ordinance

Recording Date: November 19, 1974  
Recording No: 74-15189

17. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: City of Eagle Point  
Purpose: Installation, repair, construction, reconstruction, maintenance, inspection and for the administration of the City's water system, including water meters and service lines and the facilities incidental thereto  
Recording Date: March 24, 1995  
Recording No: 95-07806  
Affects: Parcel I Tract B

18. A deed of trust to secure an indebtedness in the amount shown below,

Amount: \$130,000.00  
Dated: August 28, 2017  
Trustor/Grantor: Butte Creek Mill Foundation, an Oregon nonprofit corporation  
Trustee: First American Title Insurance Company



Beneficiary: Robert E. Russell  
Recording Date: August 30, 2017  
Recording No.: 2017-029866

19. A deed of trust to secure an indebtedness in the amount shown below,

Amount: \$90,000.00  
Dated: January 24, 2021  
Trustor/Grantor: Butte Creek Mill Foundation  
Trustee: Ticor Title  
Beneficiary: Hamcon Builders, LLC  
Recording Date: January 28, 2021  
Recording No.: 2021-003728

The above deed of trust references "Tax Lot 4500" but does not include a legal description for said property.

Note: Property taxes for the fiscal year shown below are paid in full.

Fiscal Year: 2021-2022  
Amount: \$508.52  
Levy Code: 9-01  
Account No.: 1-020613-1  
Map No.: 36-1W-03-AA-04501

Please contact the Tax Collector's Office to confirm all amounts owing, including current fiscal year taxes, supplemental taxes, escaped assessments and any delinquencies.

EXCEPTIONS AFFECTING PARCEL II:

20. City Liens, if any, in favor of the City of Eagle Point.
21. Regulations, levies, liens, assessments, rights of way and easements of Rogue Valley Sewer Service District.
22. Regulations, including levies, liens, assessments, water and irrigation rights and easements for ditches and canals of the Eagle Point Irrigation District.
23. The Land has been classified as Historic Property, as disclosed by the tax roll. If the Land becomes disqualified, said Land may be subject to additional taxes and/or penalties.

Account No.: 1-020575-0

24. Rights of the public and governmental agencies in and to any portion of said land lying within the boundaries of streets, roads, and highways.
25. Reservations, exceptions and provisions contained in the patent from the United States, and in the acts authorizing the issuance thereof.

Recording Date: January 14, 1879  
Recording No: Volume 8, Page 316



26. A deed of trust to secure an indebtedness in the amount shown below,

Amount: \$130,000.00  
Dated: August 28, 2017  
Trustor/Grantor: Butte Creek Mill Foundation, an Oregon nonprofit corporation  
Trustee: First American Title Insurance Company  
Beneficiary: Robert E. Russell  
Recording Date: August 30, 2017  
Recording No.: 2017-029866

27. A deed of trust to secure an indebtedness in the amount shown below,

Amount: \$90,000.00  
Dated: January 24, 2021  
Trustor/Grantor: Butte Creek Mill Foundation  
Trustee: Ticor Title  
Beneficiary: Hamcon Builders, LLC  
Recording Date: January 28, 2021  
Recording No.: 2021-003728

The above deed of trust references "Tax Lot 4500" but does not include a legal description for said property.

**End of Reported Information**

There will be additional charges for additional information or copies. For questions or additional requests, contact:

Trudy Lycett  
541-476-1171  
OR-TTC-MedfordTitle@ticortitle.com

Ticor Title Company of Oregon  
744 NE 7th Street  
Grants Pass, OR 97526



**EXHIBIT "A"**  
Legal Description

PARCEL I:

TRACT A:

COMMENCING AT THE SOUTHEAST CORNER OF THE W. TUCKER DONATION LAND CLAIM NO. 44 IN SECTION 3, TOWNSHIP 36 SOUTH, RANGE 1 WEST, OF THE WILLAMETTE MERIDIAN IN JACKSON COUNTY, OREGON; THENCE SOUTH 71° 06' WEST, 1684.2 FEET; THENCE NORTH 47° 12' WEST, 6.68 FEET TO A POINT ON A CURVE, FROM WHICH ITS RADIUS POINT BEARS SOUTH 41° 23' 36" EAST, 1170.0 FEET; THENCE ALONG SAID CURVE 179.89 FEET (LONG CHORD BEARS SOUTH 44° 12' 07" WEST, 179.71 FEET) TO THE POINT OF TANGENCY; THENCE SOUTH 39° 47' 50" WEST, 69.88 FEET TO A 5/8" IRON PIN, BEING THE POINT OF BEGINNING; THENCE SOUTH 39° 47' 50" WEST ALONG THE SOUTHERLY LINE OF ROYAL AVENUE TO A POINT SITUATED NORTH 47° 04' WEST 156.86 FEET, MORE OR LESS, FROM THE CENTER OF LITTLE BUTTE CREEK AND SOUTHWESTERLY 26.48' FEET FROM THE SOUTHEASTERLY CORNER OF THE TRACT DESCRIBED IN TRACT B OF DOCUMENT NO. 2005-032760, OFFICIAL RECORDS OF JACKSON COUNTY, OREGON; THENCE SOUTH 47° 04' EAST 156.86 FEET TO THE CENTER LINE OF LITTLE BUTTE CREEK; THENCE NORTHEASTERLY 26.48 FEET, MORE OR LESS, ALONG SAID CREEK TO THE SOUTHEASTERLY CORNER OF SAID TRACT; THENCE NORTH 47° 04' WEST 179.73 FEET, MORE OR LESS, ALONG THE NORTH EASTERLY BOUNDARY LINE THEREOF TO THE POINT OF BEGINNING.

ALSO, ALL THAT PORTION OF THE VACATED ROYAL AVENUE ADJACENT TO SAID PROPERTY AND INURING THEREUNTO BY LAW, VACATED BY JACKSON COUNTY, AND RECORDED NOVEMBER 19, 1974, AS NO. 74-15189, OF THE OFFICIAL RECORDS OF JACKSON COUNTY, OREGON.

TRACT B:

THAT TRACT OF LAND AS SURVEYED, BEING SITUATED IN SECTION 3, TOWNSHIP 36 SOUTH, RANGE 1 WEST, OF THE WILLAMETTE MERIDIAN IN JACKSON COUNTY, OREGON, MORE FULLY DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF BEGINNING, FROM WHICH THE SOUTHEAST CORNER OF THE W. TUCKER DONATION LAND CLAIM NO. 44 OF SAID TOWNSHIP AND RANGE, BEARS NORTH 71° 06' EAST, 1684.2 FEET; THENCE NORTH 47° 12' WEST, 6.68 FEET TO A POINT ON A CURVE FROM WHICH ITS RADIUS POINT BEARS SOUTHEASTERLY, 1170.0 FEET; THENCE ALONG SAID CURVE (LONG CHORD BEARS SOUTH 44° 12' 07" WEST, 179.71 FEET) A DISTANCE OF 179.89 FEET; THENCE SOUTH 39° 47' 50" WEST, 69.88 FEET; THENCE SOUTH 47° 04' EAST, 179.73 FEET, MORE OR LESS, TO THE CENTER OF LITTLE BUTTE CREEK; THENCE NORTH 22° 04' EAST ALONG THE CENTER OF LITTLE BUTTE CREEK, 267.14 FEET; THENCE NORTH 47° 12' WEST, 77.76 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

ALSO, ALL THAT PORTION OF THE VACATED ROYAL AVENUE ADJACENT TO SAID PROPERTY AND INURING THEREUNTO BY LAW, VACATED BY JACKSON COUNTY, AND RECORDED NOVEMBER 19, 1974, AS NO. 74-15189, OF THE OFFICIAL RECORDS OF JACKSON COUNTY, OREGON.

PARCEL II:

FROM A 4" BRASS CAPPED MONUMENT SET FOR THE NORTHEAST CORNER OF DONATION LAND CLAIM NO. 45 IN TOWNSHIP 36 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, JACKSON COUNTY, OREGON, RUN THENCE SOUTH ON THE DONATION LAND CLAIM LINE 166.32 FEET, BEING ALSO THE WESTERLY SOUTHWEST CORNER OF THE TRACT OF LAND DESCRIBED IN THE DEED RECORDS OF JACKSON COUNTY, OREGON, IN VOLUME 245, PAGE 601 AND RUNNING THENCE ALONG THE SOUTHWESTERLY LINE OF SAID TRACT SOUTH 47° 00' EAST 430.32 FEET TO THE NORTHERLY LINE OF THE COUNTY ROAD; THENCE ALONG SAID ROAD LINE SOUTH 51° 30' WEST 94 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID ROAD LINE SOUTH 51° 30' WEST 25 FEET TO THE NORTHEAST CORNER OF TRACT DESCRIBED IN SAID DEED RECORDS IN VOLUME 239, PAGE 82; THENCE ALONG THE NORTHEASTERLY LINE OF LAST-DESCRIBED TRACT NORTH 47° 00' WEST 35 FEET; THENCE NORTH 51° 30' EAST 25 FEET; THENCE SOUTH 47° 00' EAST 35 FEET TO THE TRUE POINT OF BEGINNING.



### **LIMITATIONS OF LIABILITY**

"CUSTOMER" REFERS TO THE RECIPIENT OF THIS REPORT.

CUSTOMER EXPRESSLY AGREES AND ACKNOWLEDGES THAT IT IS EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO DETERMINE THE EXTENT OF LOSS WHICH COULD ARISE FROM ERRORS OR OMISSIONS IN, OR THE COMPANY'S NEGLIGENCE IN PRODUCING, THE REQUESTED REPORT, HEREIN "THE REPORT." CUSTOMER RECOGNIZES THAT THE FEE CHARGED IS NOMINAL IN RELATION TO THE POTENTIAL LIABILITY WHICH COULD ARISE FROM SUCH ERRORS OR OMISSIONS OR NEGLIGENCE. THEREFORE, CUSTOMER UNDERSTANDS THAT THE COMPANY IS NOT WILLING TO PROCEED IN THE PREPARATION AND ISSUANCE OF THE REPORT UNLESS THE COMPANY'S LIABILITY IS STRICTLY LIMITED. CUSTOMER AGREES WITH THE PROPRIETY OF SUCH LIMITATION AND AGREES TO BE BOUND BY ITS TERMS

THE LIMITATIONS ARE AS FOLLOWS AND THE LIMITATIONS WILL SURVIVE THE CONTRACT:

ONLY MATTERS IDENTIFIED IN THIS REPORT AS THE SUBJECT OF THE REPORT ARE WITHIN ITS SCOPE. ALL OTHER MATTERS ARE OUTSIDE THE SCOPE OF THE REPORT.

CUSTOMER AGREES, AS PART OF THE CONSIDERATION FOR THE ISSUANCE OF THE REPORT AND TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE LIABILITY OF THE COMPANY, ITS LICENSORS, AGENTS, SUPPLIERS, RESELLERS, SERVICE PROVIDERS, CONTENT PROVIDERS AND ALL OTHER SUBSCRIBERS OR SUPPLIERS, SUBSIDIARIES, AFFILIATES, EMPLOYEES, AND SUBCONTRACTORS FOR ANY AND ALL CLAIMS, LIABILITIES, CAUSES OF ACTION, LOSSES, COSTS, DAMAGES AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEY'S FEES, HOWEVER ALLEGED OR ARISING, INCLUDING BUT NOT LIMITED TO THOSE ARISING FROM BREACH OF CONTRACT, NEGLIGENCE, THE COMPANY'S OWN FAULT AND/OR NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF WARRANTY, EQUITY, THE COMMON LAW, STATUTE OR ANY OTHER THEORY OF RECOVERY, OR FROM ANY PERSON'S USE, MISUSE, OR INABILITY TO USE THE REPORT OR ANY OF THE MATERIALS CONTAINED THEREIN OR PRODUCED, **SO THAT THE TOTAL AGGREGATE LIABILITY OF THE COMPANY AND ITS AGENTS, SUBSIDIARIES, AFFILIATES, EMPLOYEES, AND SUBCONTRACTORS SHALL NOT IN ANY EVENT EXCEED THE COMPANY'S TOTAL FEE FOR THE REPORT.**

CUSTOMER AGREES THAT THE FOREGOING LIMITATION ON LIABILITY IS A TERM MATERIAL TO THE PRICE THE CUSTOMER IS PAYING, WHICH PRICE IS LOWER THAN WOULD OTHERWISE BE OFFERED TO THE CUSTOMER WITHOUT SAID TERM. CUSTOMER RECOGNIZES THAT THE COMPANY WOULD NOT ISSUE THE REPORT BUT FOR THIS CUSTOMER AGREEMENT, AS PART OF THE CONSIDERATION GIVEN FOR THE REPORT, TO THE FOREGOING LIMITATION OF LIABILITY AND THAT ANY SUCH LIABILITY IS CONDITIONED AND PREDICATED UPON THE FULL AND TIMELY PAYMENT OF THE COMPANY'S INVOICE FOR THE REPORT.

THE REPORT IS LIMITED IN SCOPE AND IS NOT AN ABSTRACT OF TITLE, TITLE OPINION, PRELIMINARY TITLE REPORT, TITLE REPORT, COMMITMENT TO ISSUE TITLE INSURANCE, OR A TITLE POLICY, AND SHOULD NOT BE RELIED UPON AS SUCH. THE REPORT DOES NOT PROVIDE OR OFFER ANY TITLE INSURANCE, LIABILITY COVERAGE OR ERRORS AND OMISSIONS COVERAGE. THE REPORT IS NOT TO BE RELIED UPON AS A REPRESENTATION OF THE STATUS OF TITLE TO THE PROPERTY. THE COMPANY MAKES NO REPRESENTATIONS AS TO THE REPORT'S ACCURACY, DISCLAIMS ANY WARRANTY AS TO THE REPORT, ASSUMES NO DUTIES TO CUSTOMER, DOES NOT INTEND FOR CUSTOMER TO RELY ON THE REPORT, AND ASSUMES NO LIABILITY FOR ANY LOSS OCCURRING BY REASON OF RELIANCE ON THE REPORT OR OTHERWISE.



IF CUSTOMER (A) HAS OR WILL HAVE AN INSURABLE INTEREST IN THE SUBJECT REAL PROPERTY, (B) DOES NOT WISH TO LIMIT LIABILITY AS STATED HEREIN AND (C) DESIRES THAT ADDITIONAL LIABILITY BE ASSUMED BY THE COMPANY, THEN CUSTOMER MAY REQUEST AND PURCHASE A POLICY OF TITLE INSURANCE, A BINDER, OR A COMMITMENT TO ISSUE A POLICY OF TITLE INSURANCE. NO ASSURANCE IS GIVEN AS TO THE INSURABILITY OF THE TITLE OR STATUS OF TITLE. CUSTOMER EXPRESSLY AGREES AND ACKNOWLEDGES IT HAS AN INDEPENDENT DUTY TO ENSURE AND/OR RESEARCH THE ACCURACY OF ANY INFORMATION OBTAINED FROM THE COMPANY OR ANY PRODUCT OR SERVICE PURCHASED.

NO THIRD PARTY IS PERMITTED TO USE OR RELY UPON THE INFORMATION SET FORTH IN THE REPORT, AND NO LIABILITY TO ANY THIRD PARTY IS UNDERTAKEN BY THE COMPANY.

CUSTOMER AGREES THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE COMPANY, ITS LICENSORS, AGENTS, SUPPLIERS, RESELLERS, SERVICE PROVIDERS, CONTENT PROVIDERS, AND ALL OTHER SUBSCRIBERS OR SUPPLIERS, SUBSIDIARIES, AFFILIATES, EMPLOYEES AND SUBCONTRACTORS BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, OR SPECIAL DAMAGES, OR LOSS OF PROFITS, REVENUE, INCOME, SAVINGS, DATA, BUSINESS, OPPORTUNITY, OR GOODWILL, PAIN AND SUFFERING, EMOTIONAL DISTRESS, NON-OPERATION OR INCREASED EXPENSE OF OPERATION, BUSINESS INTERRUPTION OR DELAY, COST OF CAPITAL, OR COST OF REPLACEMENT PRODUCTS OR SERVICES, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, NEGLIGENCE, THE COMPANY'S OWN FAULT AND/OR NEGLIGENCE, STRICT LIABILITY, BREACH OF WARRANTIES, FAILURE OF ESSENTIAL PURPOSE, OR OTHERWISE AND WHETHER CAUSED BY NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT, BREACH OF WARRANTY, THE COMPANY'S OWN FAULT AND/OR NEGLIGENCE OR ANY OTHER CAUSE WHATSOEVER, AND EVEN IF THE COMPANY HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES OR KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY FOR SUCH DAMAGES.

END OF THE LIMITATIONS OF LIABILITY



# Application for Water Right Transfer



Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, Oregon 97301-1266  
(503) 986-0900  
www.wrd.state.or.us

## Consent by Deeded Landowner

State of Oregon )  
 )ss  
County of Jackson )

I Jay O'Neil in my/our capacity as President, Butte Creek Mill Foundation  
mailing address PO Box 957, Eagle Point, OR 97524

telephone number (541) 690-5356, duly sworn depose and say that I/We

consent to the proposed change(s) to Water Right Certificate Number 86767

described in a Water Right Transfer Application (T-                    ),  
(transfer number, if known)

submitted by Robert Russell

on the property in tax lot number(s) 361W03AA Lot 4501

Section 3 Township 36S North/South Range 1W East/West W.M.

located at 402 North Royal Ave., Eagle Point, OR 97524  
(site address)

Jay O'Neil  
Signature of Affiant

8 February 2022  
Date

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Date

Subscribed and Sworn to before me this 8th day of February, 2022.



Julie Ann Stephens  
Notary Public for Oregon

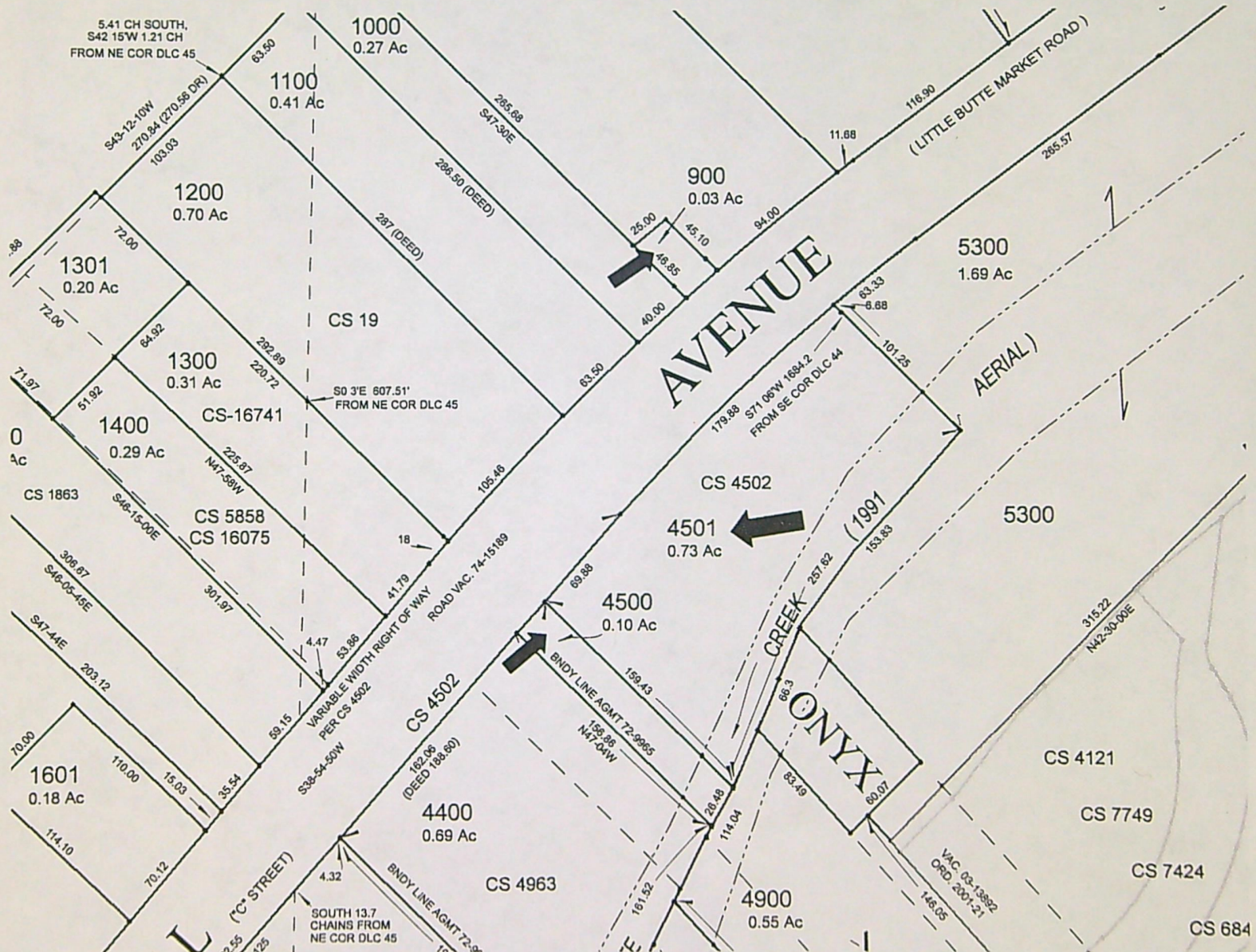
My commission expires February 28, 2025





# TICOR TITLE™

Map & Tax Lot : 36-1W-03-AA-900 & 4501 & 4500



## JACKSON COUNTY

1555 E. McAndrews Road, Ste.100  
Medford, Oregon 97504

P: 541-779-2811 F: 541-772-6079

[or-ltc-medfordtitle@ticortitle.com](mailto:or-ltc-medfordtitle@ticortitle.com)

## JOSEPHINE COUNTY

744 NE 7th Street  
Grants Pass, Oregon 97526

P: 541-476-1171 F: 541-476-1174

[or-ltc-grantspass@ticortitle.com](mailto:or-ltc-grantspass@ticortitle.com)

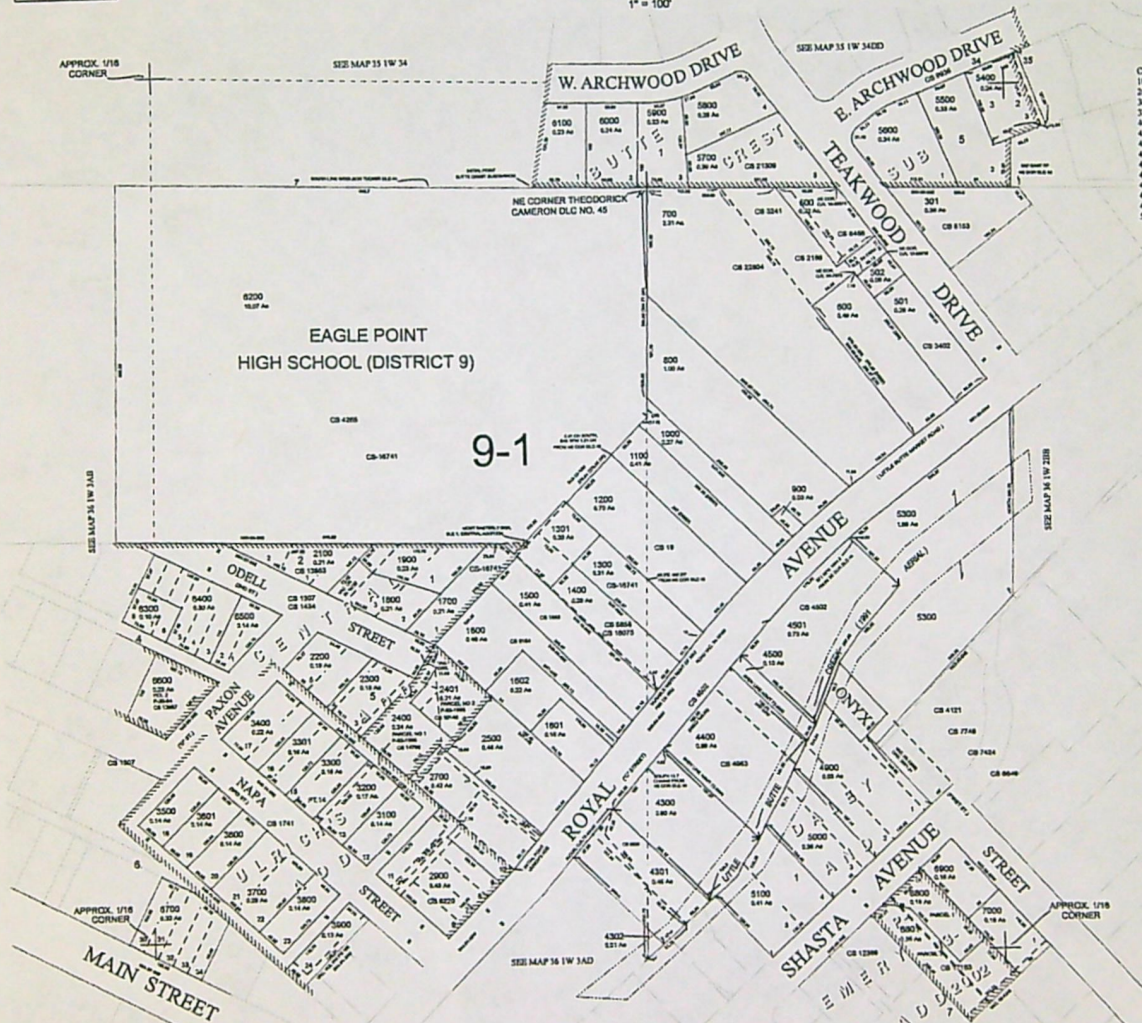
This print is made solely for the purpose of assisting in locating the premises, and the Company assumes no liability for information printed on this map, including but not limited to zoning, variations (if any) in area, actual dimensions, and locations as determined by survey.



FOR ASSESSMENT AND  
TAXATION ONLY

N.E. 1/4 N.E. 1/4 SEC. 3 T.36S. R.1W. W.M.  
JACKSON COUNTY  
1" = 100'

361W3AA  
EAGLE POINT





# Application for Water Right Transfer Evidence of Use Affidavit



Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, Oregon 97301-1266  
(503) 986-0900  
www.wrd.state.or.us

Please print legibly or type. Be as specific as possible. Attach additional pages if you need more spacing.  
Supporting documentation must be attached.

RECEIVED

APR 21 2022

OWRD

State of Oregon )  
County of Jackson ) ss

I, Robert Russell, in my capacity as owner of the water right

mailing address PO Box 1, Eagle Point, OR 97524

telephone number ( 503 ) 880-2147, being first duly sworn depose and say:

1. My knowledge of the exercise or status of the water right is based on (check one):

☒ Personal observation ☐ Professional expertise

2. I attest that:

☒ Water was used during the previous five years on the entire place of use for  
Certificate # 86767; OR

☐ My knowledge is specific to the use of water at the following locations within the last five years:

Certificate #	Township	Range	Mer	Sec	¼ ¼	Gov't Lot or DLC	Acres (if applicable)

OR

☐ Confirming Certificate # \_\_\_\_\_ has been issued within the past five years; OR

☒ Part or all of the water right was leased instream at some time within the last five years. The  
instream lease number is: IL-1608 (Note: If the entire right proposed for  
transfer was not leased, additional evidence of use is needed for the portion not leased instream.); OR

☐ The water right is not subject to forfeiture and documentation that a presumption of forfeiture for non-use  
would be rebutted under ORS 540.610(2) is attached.

☐ Water has been used at the actual current point of diversion or appropriation for more than  
10 years for Certificate # \_\_\_\_\_ (For Historic POD/POA Transfers)

(continues on reverse side)



APR 21 2022

3. The water right was used for: (e.g., crops, pasture, etc.): Power Generation to mill flour

4. I understand that if I do not attach one or more of the documents shown in the table below to support the above statements, my application will be considered incomplete.

Robert A. Russell  
Signature of Affiant

4/19/22  
Date

Signed and sworn to (or affirmed) before me this 19 day of April, 2022



Wendi Cheers  
Notary Public for Oregon

My Commission Expires: 9/26/2023

Supporting Documents	Examples
<input type="checkbox"/> Copy of a water right certificate that has been issued within the last five years. (not a remaining right certificate)	Copy of <b>confirming</b> water right certificate that shows issue date
<input checked="" type="checkbox"/> Copies of receipts from sales of irrigated crops or for expenditures related to use of water	<ul style="list-style-type: none"> <li>• Power usage records for pumps associated with irrigation use</li> <li>• Fertilizer or seed bills related to irrigated crops</li> <li>• Farmers Co-op sales receipt</li> </ul>
<input type="checkbox"/> Records such as FSA crop reports, irrigation district records, NRCS farm management plan, or records of other water suppliers	<ul style="list-style-type: none"> <li>• District assessment records for water delivered</li> <li>• Crop reports submitted under a federal loan agreement</li> <li>• Beneficial use reports from district</li> <li>• IRS Farm Usage Deduction Report</li> <li>• Agricultural Stabilization Plan</li> <li>• CREP Report</li> </ul>
<input type="checkbox"/> Aerial photos containing sufficient detail to establish location and date of photograph	<p>Multiple photos can be submitted to resolve different areas of a water right. If the photograph does not print with a "date stamp" or without the source being identified, the date of the photograph and source should be added.</p> <p>Sources for aerial photos: OSU – <a href="http://www.oregonexplorer.info/imagery">www.oregonexplorer.info/imagery</a> OWRD – <a href="http://www.wrd.state.or.us">www.wrd.state.or.us</a> Google Earth – <a href="http://earth.google.com">earth.google.com</a> TerraServer – <a href="http://www.terraserver.com">www.terraserver.com</a></p>
<input checked="" type="checkbox"/> Approved Lease establishing beneficial use within the last 5 years	Copy of instream lease or lease number <u>IL-1608</u>



## HENDERSON Sarah A \* WRD

---

**From:** HENDERSON Sarah A \* WRD  
**Sent:** Wednesday, April 20, 2022 3:43 PM  
**To:** Chrysten Rivard; Bob Russell  
**Cc:** Shavon Haynes (HaynesSL@jacksoncounty.org); HENDERSON Sarah A \* WRD  
**Subject:** Draft Preliminary Determination for Instream T-13920  
**Attachments:** T-13920-dpd-approve-FINAL.pdf; T-13920-dpd-cov-FINAL.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Good Afternoon,

Attached is the Draft Preliminary Determination and Cover Letter proposing to approve Instream Transfer Application T-13920.

Please read the cover letter to see the next steps in the processing.

If you would like a hard copy mailed to you, let me know and I can send one out.

Also, let me know if you have any questions. The deadline for the next steps is May 19, 2022.

Take care, and talk soon.

Sarah

Please note email address update: [sarah.a.henderson@water.oregon.gov](mailto:sarah.a.henderson@water.oregon.gov)

*Sarah A. Henderson*

Flow Restoration Program Coordinator  
Transfer and Conservation Section  
725 Summer St. NE, Suite A | Salem, OR 97301  
Work Cell 503-979-9872  
Email: [sarah.a.henderson@water.oregon.gov](mailto:sarah.a.henderson@water.oregon.gov)



Integrity | Service | Technical Excellence | Teamwork | Forward-Looking





# Oregon

Kate Brown, Governor

## Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

DATE: April 20, 2022

VIA E-MAIL

### Applicant

Robert Russell

PO Box 1

Eagle Point, Oregon 97524

[rrussell1950@aol.com](mailto:rrussell1950@aol.com)

### Agent

Trout Unlimited (TU)

633 Iowa Street

Ashland, Oregon 97520

[chrysten.rivard@tu.org](mailto:chrysten.rivard@tu.org)

Reference: Water Right Transfer Application T-13920

Your water right transfer is in the first of three phases of processing. Enclosed is a draft of the Department's Preliminary Determination regarding Transfer Application T-13920. The document reflects the Department's conclusion that, based on the information currently available, the transfer will be approved. Your response and submittal of the items outlined below are required by May 19, 2022.

### ***Required items needing your immediate attention:***

1. Please carefully review the Draft Preliminary Determination to verify that it accurately reflects the changes you intend to make and to become familiar with the proposed conditions.
2. **Respond in writing** by May 19, 2022, with acknowledgement that you agree to the proposed action and conditions. If you find any errors, please let me know.
3. **REQUIRED:** You must submit a **Report of Ownership** for the lands where the water right(s) are currently located (i.e., the FROM lands). This report:
  - a) Must be prepared by a title company;
  - b) Shall include a "prepared by" statement and the date the title company prepared the report printed on the cover sheet;
  - c) Must be:
    - i. Prepared within 3 months of the Draft Preliminary Determination showing current ownership; **OR**
    - ii. Prepared within 3 months of recording of a water right conveyance agreement; **OR**
    - iii. Have a prepared date showing ownership at the time a water right conveyance agreement was recorded.

*If water right conveyance agreements are involved, it is helpful to provide copies of those agreements along with the Report of Ownership.*

**IMPORTANT:** In order for the Department to clearly understand the date that the title company prepared the Report of Ownership, the title company must indicate/state the date that they prepared the report on the coversheet and/or first page of the report.

- d) Must include a list of owners at the time the report was generated; **AND**
- e) Must include a legal description of the property where the water right to be transferred is currently located (i.e., the FROM lands).



5. You must provide a notarized statement of consent signed by any landowner listed in the Report of Ownership who is not already included in the transfer application. The Department's statement of consent form (**Consent By Deeded Landowner**) is available at:  
[https://www.oregon.gov/OWRD/WRDFormsPDF/consent\\_to\\_transfer\\_form.pdf](https://www.oregon.gov/OWRD/WRDFormsPDF/consent_to_transfer_form.pdf)
6. Notice of this transfer will need to be published in a newspaper with general circulation in the area where the water rights are currently located. You will be responsible for the charges.

**What happens next...**

Once the Preliminary Determination is issued a publication period is required. Because of a change in character of use, the Department will publish notice of the transfer in a local newspaper having a general circulation in the area of the water right at least once per week for two consecutive weeks. You are responsible for sending a check to cover the cost of publication prior to the issuance of the Preliminary Determination and publication of notice. As outlined in OAR 690-380-4020(3), publication costs include both the direct cost of the notice and indirect processing costs (not to exceed 20% of the direct costs) for processing.

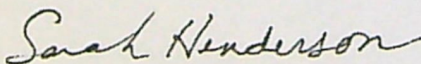
Issuance of the Preliminary Determination will occur shortly after we receive:

1. Your written response to the conditions and proposed action in the Draft Preliminary Determination (e-mail is acceptable); and
2. The Report of Ownership, including affidavits of consent from any landowners shown in the ownership report who have not signed the transfer application. The title company must indicate/state the date that they prepared the ownership report on the coversheet and/or first page of the report.

**If we do not receive the items listed above by May 19, 2022, a Preliminary Determination may be issued denying the application as incomplete.**

Please do not hesitate to contact me at 503-979-9872 or [sarah.a.henderson@water.oregon.gov](mailto:sarah.a.henderson@water.oregon.gov) if I may be of assistance.

Sincerely,



Sarah Henderson  
Transfer and Conservation Section

cc: Transfer Application file T-13920  
Shavon Haynes, District 13 Watermaster (*via e-mail*)



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

In the Matter of Transfer Application  
T-13920, Jackson County

) **D R A F T** PRELIMINARY  
)  
) DETERMINATION PROPOSING APPROVAL  
) OF A CHANGE IN PLACE OF USE AND  
) CHARACTER OF USE

**Authority**

ORS 540.505 to 540.580 establishes 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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

**Applicant**

Robert Russell  
PO Box 1  
Eagle Point, Oregon 97524  
[rrussell1950@aol.com](mailto:rrussell1950@aol.com)

**Agent**

Trout Unlimited (TU)  
633 Iowa Street  
Ashland, Oregon 97520  
[chrysten.rivard@tu.org](mailto:chrysten.rivard@tu.org)

**Findings of Fact**

1. On February 14, 2022, Robert Russell and TU filed an application to change a portion of the place of use and character of use under Certificate 86767 to instream use. The Department assigned the application number T-13920.
2. Notice of the application for transfer was published on February 22, 2022, pursuant to OAR 690-380-4000. No comments were received by the comment deadline, March 24, 2022.
3. Consistent with land use requirements, notice of the intent to file the instream transfer application was provided by the applicant to Jackson County Planning Department and City of Eagle Point Public Works. Additionally, the Department provided notification of the proposed action to these local governments upon receipt of Transfer Application T-13920.
4. The portion of the right to be transferred is as follows:

**Certificate:** 86767 in the name of Robert E. Russell and Deborah S. Russell (confirmed by Little Butte Creek Decree of record at Salem, in the Order Record of the Water Resources Director in Volume 3, at Page 1)



**Use:** Power Development  
**Season of Use:** April 1 through March 31  
**Priority Date:** 1872  
**Quantity:** **Limit:** The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 6.63 Cubic Feet per Second (CFS) from April 1 through October 31 and 8.4 CFS from November 1 through March 31 of each year, or its equivalent in case of rotation, measured at the point of diversion.  
**Source:** Little Butte Creek, a tributary to Rogue River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	1 W	WM	35	SW SW	90 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 35

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q
36 S	1 W	WM	3	NE NE

5. A total of 2814.19 acre-feet of water from April 1 through October 31 and 2515.83 acre-feet of water from November 1 through March 31 may be beneficially used annually under the existing right.
6. Application T-13920 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
7. Application T-13920 proposes to change the place of use of the right to a point at T35S, R1W, WM, Section 35 in the SW SW.
8. The applicant proposes the quantities of water to be transferred instream be protected as follows:

Period	Rate (cfs)	Volume (acre-feet)
November 1 through March 31	8.40	2515.83
April 1 through October 31	6.63	2814.19
Total	15.03	5330.02

9. The applicant has requested that any instream water right established as a result of this instream transfer be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant has also requested that any instream water rights established as a result of this instream transfer replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow



conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date.

***Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)***

10. The portion of the right proposed for transfer was leased instream under IL-1608. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
11. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Application T-13920.
12. The quantities to be protected instream are as follows:  
Little Butte Creek, tributary to Rogue River

**Instream Point:** At the POD (as described below)

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	1 W	WM	35	SW SW	90 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 35

Certificate	Priority Date	Instream Rate (CFS)	Period Protected Instream
86767	1872	6.63	April 1 through October 31
		8.40	November 1 through March 31

13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.
15. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
16. The protection of flows at the authorized point of diversion is appropriate, considering:
  - a) The instream water right begins at the recorded point of diversion;
  - b) The location of confluences with other streams downstream of the point of diversion;
  - c) There are known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - d) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the point of the instream water right.



17. Within the proposed instream protection on Little Butte Creek, there is an existing instream water rights established under ORS 537.348 (instream transfer process) for the purpose of maintaining instream flow for fisheries enhancement. There is also a pending instream water right application IS-88945, filed by the Oregon Department of Fish and Wildlife pursuant to ORS 537.341 (state agency application process), with the Department to establish an instream water right on Little Butte Creek for the purposes of conservation, maintenance and enhancement of aquatic and fish life, wildlife, and fish and wildlife habitat.
18. Any instream water right established as a result of this instream transfer will be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). Any instream water right established as a result of this instream transfer will replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date.
19. The total monthly quantities of water to be protected under the existing and proposed instream right at the point will provide for a beneficial purpose and do not exceed the estimated average natural flow.

#### **Determination and Proposed Action**

The changes in character of use and place of use to instream use proposed in application T-13920 appear to be consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

*If Transfer Application T-13920 is approved, the final order will include the following:*

1. *The changes in character of use and place of use to instream use proposed in application T-13920 are approved.*
2. *Water right certificate 86767 is cancelled. A new certificate confirming the instream water right shall be issued. A new certificate will be issued describing that portion of the right not affected by this transfer.*
3. *The water user shall assist in maintaining the existing measurement device at the original point of diversion and at the gage 14347800 and shall make such improvements as may be required by the Department.*
4. *The instream water right shall provide for the protection of streamflows for a point located at T35S, R1W, WM, Section 35 in the SW SW.*



5. *The quantities of water to be protected under the instream water right are:*

**Instream Point:** At the POD (as described below)

<i>Twp</i>	<i>Rng</i>	<i>Mer</i>	<i>Sec</i>	<i>Q-Q</i>	<i>Measured Distances</i>
35 S	1 W	WM	35	SW SW	90 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 35

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (CFS)</i>	<i>Period Protected Instream</i>
86767	1872	6.63	April 1 through October 31
		8.40	November 1 through March 31

6. *Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion.*
7. *The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.*
8. *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 86767 and any related decree.*
9. *The former place of use of the transferred water shall no longer receive water as part of this right.*

Dated at Salem, Oregon this day \_\_\_\_\_.

**D R A F T**

\_\_\_\_\_  
Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
Tom M. Byler, Director, Oregon Water Resources Department

This draft Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-979-9872 or Sarah.A.Henderson@water.oregon.gov





Oregon  
Kate Brown, Governor

Water Resources Department  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
Fax (503) 986-0904

February 18, 2022

ROBERT E. RUSSELL  
PO BOX 1  
EAGLE POINT, OR 97524

Reference: Instream Transfer T- 13920

On February 14, 2022, we received your water right Transfer application. The application fees of \$2865.00 were deducted from a state account.

By copy of this letter, we are asking the Watermaster for a report regarding the potential for injury to existing water rights which may be caused by the requested change.

This application may require publication of a notice for two consecutive weeks in a newspaper with general circulation in the area where the water right is located. If it is determined that newspaper notice will be required, the Department will prepare the notice and notify you of the cost. You will be responsible for submitting payment to the Department prior to publication of the notice.

Except as provided under ORS 540.510(3) for municipalities, you may not use water for the new use or in the new place of use until a final order approving the transfer application has been issued by the Department.

In order to avoid any possible forfeiture of the water right, you should continue to use the water as described by your existing water right.

If the land is sold before the application is approved, the buyer's consent to the application will be required unless a recorded deed or other legal document clearly established that the water right was not conveyed in the sale.

Refer to the following page for a chart showing the steps and expected timelines for the processing of your application.

If you have any questions, please contact the Transfer Section at (503) 979-9931.

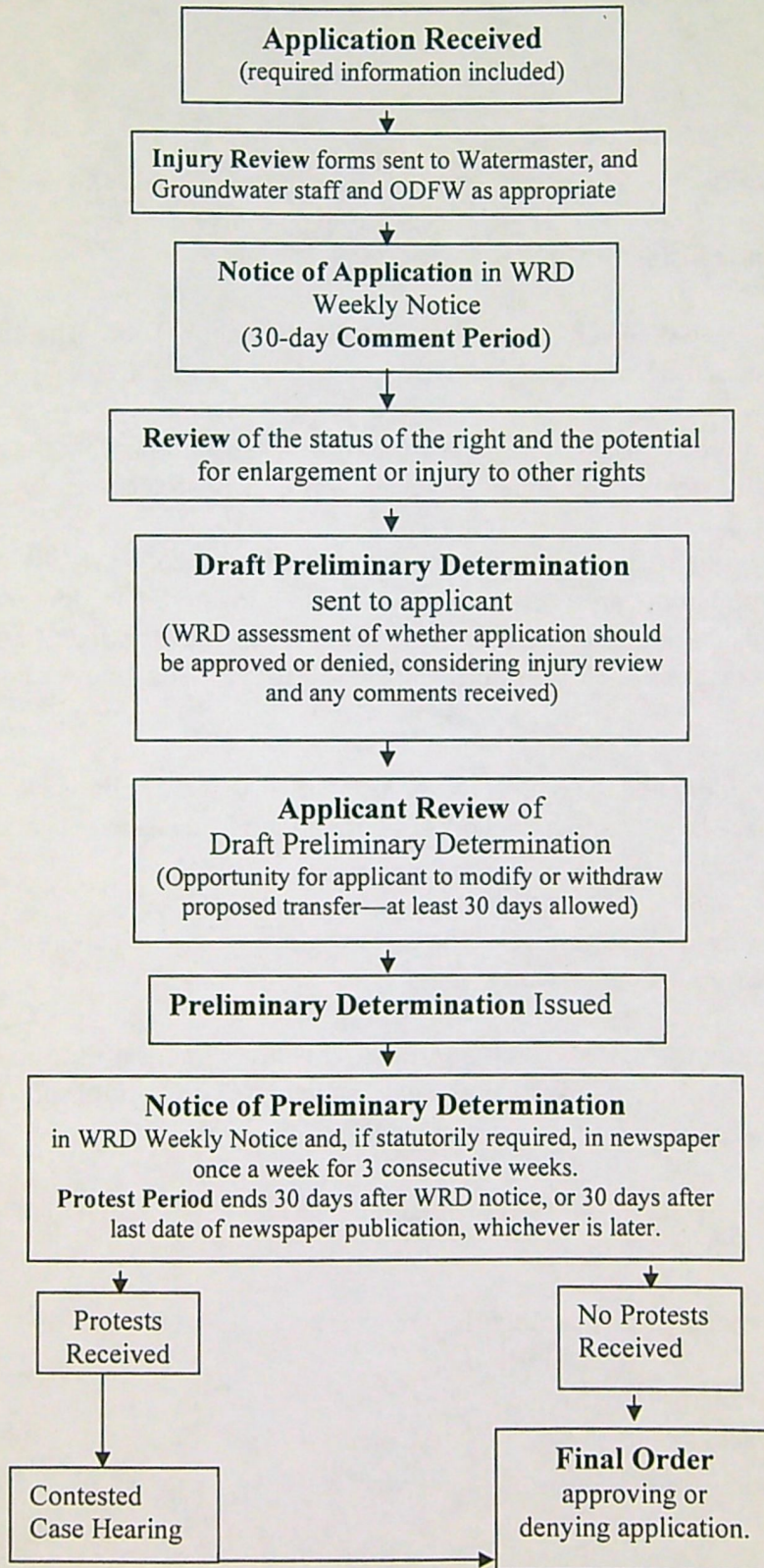
Cc: Watermaster Dist. #13 (via email)  
Chrysten Rivard, Agent  
City of Eagle Point  
Jackson County

Enclosure



## Instream Transfer Process

OAR 690 Divisions 380 and 077





Application for  
Water Right Instream Transfer  
Part 1 of 6 – Minimum Requirements Checklist



Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, Oregon 97301-1266  
(503) 986-0900  
www.oregon.gov/OWRD

**This transfer application will be returned if Parts 1 through 6 and all required attachments are not completed and included.**

For questions, please call (503) 986-0900, and ask for Transfer Section.

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**FOR ALL INSTREAM TRANSFER APPLICATIONS**

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Check all items included with this application. (N/A = Not Applicable)



Part 1 – Completed Minimum Requirements Checklist.



Part 2 – Completed Map Checklist.



Part 3 – Application Fee, payable by check to the Oregon Water Resources Department, and completed Fee Worksheet, page 3. Try the new online fee calculator at:

[http://apps.wrd.state.or.us/apps/misc/wrd\\_fee\\_calculator](http://apps.wrd.state.or.us/apps/misc/wrd_fee_calculator). If you have questions, call Customer Service at (503) 986-0801.

Note: Instream transfers are considered both a change in place of use and character of use. In addition, an automatic 50% fee waiver applies to all instream transfers.



Part 4 – Completed Applicant Information and Signature.



Part 5 – Completed Instream Use Information.



Part 6 – Information about the Transferred Water Rights: **How many water rights are to be transferred?** 1 **List them here:** Certificate 86767

Please include a separate Part 6 for each water right. (See instructions on page 8)

**Attachments:**



Completed Instream Transfer Application Map.



Completed Evidence of Use Affidavit and supporting documentation.



☐ N/A

Affidavit(s) of Consent from Landowner(s) (if the applicant does not own the land the water right is on.)



☒ N/A

Supplemental Form D – For water rights served by or issued in the name of an irrigation district. Complete when the transfer applicant is not the irrigation district.



Land Use Notice - Notice of the intent to file an instream transfer application must be provided to each affected local government along the proposed reach. Copies of the notices must be enclosed with the instream transfer application.

**(For Staff Use Only)**

**WE ARE RETURNING YOUR APPLICATION FOR THE FOLLOWING REASON(S):**

☐ Application fee not enclosed/insufficient

☐ Map not included or incomplete

☐ Land Use Form not enclosed or incomplete

☐ Additional signature(s) required

☐ Part \_\_\_\_\_ is incomplete

Other/Explanation \_\_\_\_\_

Staff: \_\_\_\_\_ 503- \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_



## Part 2 of 6 – Map Checklist

Your transfer application will be returned if any of the map requirements listed below are not met.

Please be sure that the transfer application map you submit includes all the required items and matches the existing water right map. Check all boxes that apply.

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- ☐ ☒ N/A Certified Water Right Examiner (CWRE) Stamp and Original Signature. For list of CWREs see [http://apps.wrd.state.or.us/apps/wr/cwre\\_license\\_view/](http://apps.wrd.state.or.us/apps/wr/cwre_license_view/).
- OR
- ☒ ☐ N/A Waiver of requirement that map be prepared by a CWRE. Completed map waiver form is signed by the Department's Regional Manager and included in the application. The map **must** still meet Department mapping requirements described below.
- ☐ ☒ N/A If **more than three** water rights are involved, separate maps are needed for each water right.
- ☒ Permanent quality printed with dark ink on good quality paper.
- ☒ The size of the map can be 8½ x 11 inches, 8½ x 14 inches, 11 x 17 inches, or up to 30 x 30 inches. For 30 x 30 inch maps, one extra copy is required.
- ☒ A north arrow, a legend, and scale.
- ☒ The scale of the map must be: 1 inch = 400 feet, 1 inch = 1,320 feet, the scale of the Final Proof/Claim of Beneficial Use Map (the map used when the permit was certificated), the scale of the county assessor map if the scale is not smaller than 1 inch = 1,320 feet, or a scale that has been pre-approved by the Department.
- ☒ Township, Range, Section, quarter-quarter, DLC, Government Lot, and other recognized public land survey lines.
- ☒ Tax lot boundaries (property lines) are required. Tax lot numbers are recommended.
- ☒ Major physical features including rivers and creeks showing direction of flow, lakes and reservoirs, roads, and railroads.
- ☒ Major water delivery system features from the point(s) of diversion/appropriation such as main pipelines, canals, and ditches.
- ☒ Existing place of use that includes separate hachuring for each water right, priority date and use including number of acres in each quarter-quarter section, government lot, or in each quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If less than the entirety of the water right is being changed, a separate hachuring is needed for lands left unchanged.
- ☒ Existing diversion point(s) with distance and bearing or coordinates from a recognized survey corner. This information can generally be found in your water right certificate or permit.



## Part 3 of 6 – Fee Worksheet

FEE WORKSHEET for INSTREAM TRANSFER			
1	Base Fee (includes Place of Use and Character of Use to Instream changes to one water right for up to 1 cfs)	1	\$2,450
	Number of water rights included in transfer <u>1</u> (2a) Subtract 1 from the number in 2a above: <u>0</u> (2b) <i>If only one water right, this will be 0</i>		
2	Multiply line 2b by \$610 and enter » » » » » » » » » » » » » » » »	2	\$0
	Enter the cfs for the portions of the rights to be transferred (see example below*): <u>8.4</u> (3a) Subtract 1.0 from the number in 3a above: <u>7.4</u> (3b) If 3b is 0, enter 0 on line 3 » » » » » » » » » » » » » » » » If 3b is greater than 0, round up to the nearest whole number: <u>8</u> (3c) and multiply 3c by \$410, then enter on line 3 » » » » » » » » » » » » » » » » » »		<div style="color: blue; font-weight: bold; font-size: 1.2em;">RECEIVED</div> <div style="color: blue; font-weight: bold; font-size: 1.2em;">FEB 14 2022</div> <div style="color: blue; font-weight: bold; font-size: 1.2em;">OWRD</div>
3		3	\$3,280
4	Add entries on lines 1 through 3 above » » » » » » » » » » Subtotal:	4	\$5,730
5	Multiply line 4 by 0.5 and enter on line 5 » » » » » » » » » » » » » » » »	5	\$2,865
6	Subtract line 5 from line 4 » » » » » » » » » » » » » » » » <b>Transfer Fee:</b>	6	\$2,865

\*Example for Line 3a calculation to transfer 45.0 acres of Primary Certificate 12345 (total 1.25 cfs for 100 acres) and 45.0 acres of Supplemental Certificate 87654 (1/80 cfs per acre) on the same land:

1. For irrigation calculate cfs for each water right involved as follows:
  - a. Divide total authorized cfs by total acres in the water right (*for C12345, 1.25 cfs ÷ 100 ac*); then multiply by the number of acres to be transferred to get the transfer cfs (*x 45 ac = 0.56 cfs*).
  - b. If the water right certificate does not list total cfs, but identifies the allowable use as 1/40 or 1/80 of a cfs per acre; multiply number of acres proposed for change by either 0.025 (1/40) or 0.0125 (1/80). (*For C87654, 45.0 ac x 0.0125 cfs/ac = 0.56 cfs*)
2. Add cfs for the portions of water rights on all the land included in the transfer; however **do not count cfs for supplemental rights on acreage for which you have already calculated the cfs fee for the primary right on the same land**. The fee should be assessed only once for each "on the ground" acre included in the transfer. (*In this example, blank 3a would be only 0.56 cfs, since both rights serve the same 45.0 acres. Blank 3b would be 0 and Line 3 would then also become 0*).



## Part 4 of 6 – Applicant Information and Signature

Is this a ☒ Permanent Instream Transfer or ☐ Time-Limited Instream Transfer?

### Applicant Information

APPLICANT/BUSINESS NAME Robert Russell			PHONE NO. (503) 880-2147	ADDITIONAL CONTACT NO.
ADDRESS PO Box 1			FAX NO.	
CITY Eagle Point	STATE OR	ZIP 97524	E-MAIL rrussell1950@aol.com	
BY PROVIDING AN E-MAIL ADDRESS, CONSENT IS GIVEN TO RECEIVE ALL CORRESPONDENCE FROM THE DEPARTMENT ELECTRONICALLY. COPIES OF THE FINAL ORDER DOCUMENTS WILL ALSO BE MAILED.				

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**Agent Information** – The agent is authorized to represent the applicant in all matters relating to this application.

AGENT/BUSINESS NAME Chrysten Rivard, Oregon Director Trout Unlimited			PHONE NO. (541) 973-4431	ADDITIONAL CONTACT NO.
ADDRESS 633 Iowa St.			FAX NO.	
CITY Ashland	STATE OR	ZIP 97520	E-MAIL chrysten.rivard@tu.org	
BY PROVIDING AN E-MAIL ADDRESS, CONSENT IS GIVEN TO RECEIVE ALL CORRESPONDENCE FROM THE DEPARTMENT ELECTRONICALLY. COPIES OF THE FINAL ORDER DOCUMENTS WILL ALSO BE MAILED.				

Explain in your own words what you propose to accomplish with this transfer application, and why:  
We propose to transfer instream the portion of Certificate 86767 that exceeds 16cfs, which will be retained for the current purpose of power development. We propose to protect the water instream at the Point of Diversion.

If you need additional space, continue on a separate piece of paper and attach to the application as "Attachment 1".

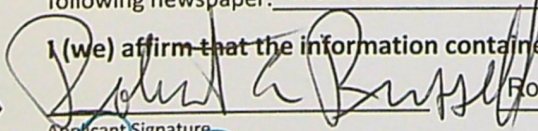
☐ Check this box if this project is fully or partially funded by the American Recovery and Reinvestment Act. (Federal stimulus dollars)

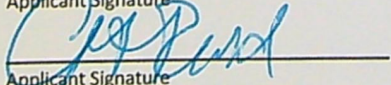
### Check one box

- ☒ By signing this application, I understand that, upon receipt of the draft preliminary determination and prior to Department approval of the transfer, I will be required to provide landownership information and evidence that I am authorized to pursue the transfer as identified in OAR 690-380-4010(5); **OR**
- ☐ I affirm the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; **OR**
- ☐ I affirm that the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the water right proposed for transfer is appurtenant and have supporting documentation.

I understand that prior to Department approval of the transfer, I may be required to submit payment to the Department for publication of a notice in a newspaper with general circulation in the area where the water right is located, once per week for two consecutive weeks. If more than one qualifying newspaper is available, I suggest publishing the notice in the following newspaper: Medford Mail Tribune.

I (we) affirm that the information contained in this application is true and accurate.

  
 Applicant Signature \_\_\_\_\_ Robert Russell  
 Print Name (and Title if applicable)

  
 Applicant Signature \_\_\_\_\_ Chrysten Rivard, OR Director  
 Print Name (and Title if applicable)

2/4/22  
 Date

2/10/22  
 Date

Is the applicant the sole owner of the land on which the water right, or portion thereof, proposed for transfer is located? ☐ Yes ☒ No If NO, include signatures of all deeded landowners (and mailing and/or e-mail addresses if different than the applicant's) or attach affidavits of consent (and mailing and/or e-mail addresses) from all landowners or individuals/entities to which the water right(s) were conveyed.



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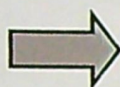
Check the following boxes that apply:

- ☐ Check here if any of the water rights proposed for transfer are located within or served by an irrigation district or other water district before the transfer. (Tip: Complete and attach Supplemental Form D.)

IRRIGATION DISTRICT NAME	ADDRESS	
CITY	STATE	ZIP

- ☐ Check here if water for any of the rights is supplied under a water service agreement or other contract for stored water with a federal agency or other entity.

ENTITY NAME	ADDRESS	
CITY	STATE	ZIP



To meet State Land Use Consistency Requirements, you must list all local governments (each county, city, municipal corporation, or tribal government) within whose jurisdiction the proposed instream reach will be located.

ENTITY NAME City of Eagle Point, Public Works	ADDRESS P.O. Box 779	
CITY Eagle Point	STATE OR	ZIP 97524

ENTITY NAME Jackson County	ADDRESS 10 South Oakdale Ave.	
CITY Medford	STATE OR	ZIP 97501

ENTITY NAME	ADDRESS	
CITY	STATE	ZIP

ENTITY NAME	ADDRESS	
CITY	STATE	ZIP

ENTITY NAME	ADDRESS	
CITY	STATE	ZIP



## Part 5 of 6 – Proposed Instream Use Information

Identify the Public Use for which the instream right is requested (check at least one box):

- ☒ Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
- ☐ Recreation
- ☐ Navigation
- ☐ Pollution Abatement

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Instream use proposed to be created by the instream transfer:

Originating Water Right Number (as identified in Part 5)	Priority Date	Source	Proposed Instream Period	Rate (cfs)*	Volume (ac-ft)**
Certificate 86767	1872	Little Butte Creek	November 1 through March 31	8.4	2,515.83
Certificate 86767	1872	Little Butte Creek	April 1 through October 31	6.63	2,814.19
TOTAL VOLUME					5330.02

**\*Tip:** To calculate rate (if other than the rate allowed by the right), divide the volume by the number of days in the period and then divide by 1.983471; or

**\*\*Tip:** To calculate volume, multiply the rate by the number of days in the instream period and then multiply by 1.983471.

Note: The instream rate may not exceed the max rate allowed by the existing right(s) and the total volume may not exceed to max volume or duty allowed by the existing right(s).

Additional Information: \_\_\_\_\_.

Identify the location of the proposed instream water right.

- ☒ Water is requested to be protected at a point.  
Location (i.e. the point of diversion (POD) – use the POD Name or Number from Table 1): \_\_\_\_\_.
- ☐ Water is requested to be protected within a reach:  
Location of proposed reach (If an instream water right reach is requested, identify the upstream and downstream extent of the reach): \_\_\_\_\_.

Recommendations for conditions on the instream use to avoid taking away or impairing existing water rights.

- ☒ None
- ☐ Other (such conditions may include, but are not limited to, reductions in the instream flow levels in cfs per month or total ac-ft, the effective reach(es) or lake levels of the instream flow, measuring locations and the strategy for monitoring the instream flow or lake levels): \_\_\_\_\_.



Are there any existing instream water rights on the same point or within the same requested reach(es) or lake, or on a portion thereof?

☐ No ☒ Yes (identify other instream water rights): IS 88945

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Note: New instream water rights are generally (but not always) additive to instream water rights established under ORS 537.348 (instream transfer application process) and ORS 537.470 (allocation of conserved water) and replace a portion of instream water rights established under ORS 537.341 (state agency application process) or ORS 537.346 (conversion of minimum perennial streamflows) with an earlier priority date.

Is it your intent to have the proposed instream water right transfer be additive to any instream water right established under ORS 537.348 and ORS 537.470 and replace a portion of any instream water right established under ORS 537.341 and ORS 537.346 with an earlier priority date?

☒ Yes ☐ No. If no, please explain your intent: \_\_\_\_\_

If the proposed conversion would add to the amounts of an existing instream water right(s) established under ORS 537.341 or 537.346, provide documentation demonstrating why additional instream flows are necessary. Supporting documentation should include information from the Oregon Dept. of Fish and Wildlife (ODFW) (fish life), Dept. of Environmental Quality (DEQ) (pollution abatement), and/or Parks and Recreation Dept. (recreation).

Is the requested instream flow intended to exceed the estimated average natural flow or level occurring from the drainage system?

- ☒ No; OR
- ☐ Yes (Provide supporting documentation that demonstrates why additional flows are significant for the public use requested.); OR
- ☐ Yes, and it is presumed that flows that exceed the estimated average natural flow or natural lake levels are significant because:
- ☐ The requested flow does not exceed the maximum amount of any instream water right application applied for under ORS 537.341 (state agency instream water right application process) for the same reach or portion thereof, and the requested public use is for the same public use as the afore mentioned instream water right application, and
  - ☐ For the specified time period that flows are requested to exceed the estimated average natural flow or lake level, the stream is in an ODFW flow restoration priority watershed. A copy of the priority watershed map indicating the specific watershed involved should be included with the application. Priority watershed maps may be found on the OWRD web page; or
  - ☐ The stream is listed as water quality limited and DEQ has provided scientific information that demonstrates that increased flows would improve water quality. The scientific information provided by DEQ should be included with the transfer application.

For a Time Limited Instream Transfer, please answer the following:

- ☐ The time-limited instream transfer is for a specific number of years:  
\_\_\_\_\_ Begin Year to \_\_\_\_\_ End Year
- ☐ Time-limited instream transfer is to terminate based upon other conditions:  
Conditions: \_\_\_\_\_



## INSTRUCTIONS for editing the Application Form

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To add additional lines to tables within the forms or to copy and paste additional Part 6 pages, please **save the application form to your computer**. Unlock the document by using one of the following instructions for your Microsoft Word software version:

**Microsoft Word 2003**

Unlock the document by one of the following:

- Using the **Tools** menu => click **Unprotect Document**;  
**OR**
- Using the **Forms** toolbar => click on the **Protect/Unprotect** icon.

To relock the document to enable the checkboxes to work, you will need to:

- Using the **Tools** menu => click **Protect Document**;  
**OR**
- Using the **Forms** toolbar => click on the **Protect/Unprotect** icon.

**Microsoft Word 2007**

- Unlock the document by clicking the **Review** tab, then click **Protect Document**, then click **Stop Protect**
- To relock the document, click **Editing Restrictions**, then click **Allow Only This Type of Editing**, select **Filling In Forms** from the drop-down menu, then check **Yes, Start Enforcing Protection**.

**Microsoft Word 2010**

- Unlock the document by clicking the **Review** tab, toggle the **Restrict Editing** icon at the upper right, then click **Stop Protect** at the bottom right. Then uncheck the "**Allow only this type of editing** in the document: **Filling in forms**" in the "Editing restrictions" section on the right-hand list of options.
- To relock the document, check the **Editing Restrictions/Allow Only This Type of Editing/Filling In Forms** box from the drop-down menu, then check **Yes, Start Enforcing Protection**. You do not need to assign a password for the editing restrictions.

**Other Alternatives:**

- Photocopy pages or tables in Part 6, ~~mark through~~ any non-applicable information, insert/attach photocopied pages to document in the appropriate location, and manually amend page numbers as necessary (e.g. Page 5 6 of 9 10).
- You may refer to additional attachments that you may include, such as separately produced tables or spreadsheets to convey large numbers of rows of place of use listings, owner/property parcels, etc. You may contact the Department at 503-986-0900 and ask for Transfer Staff if you have questions.

Once the application has been unlocked, you may:

- add additional rows to tables using the Table tools, and
- select and copy the pages of Part 6 and paste as many additional sets of Part 6 pages as needed at the end of the application.

After editing, re-lock the document to enable checkboxes to work.



## Part 6 of 6 – Water Right Information

Please use a separate Part 6 for each water right being changed. See instructions on page 8, to copy and paste additional Part 6s, or to add additional rows to tables within the form.

**CERTIFICATE #** 86767

**Name on Certificate:** Robert E Russell and Deborah S. Russell

Date(s) of Priority: 1872

Source(s) of Water to be Affected by the Transfer: Little Butte Creek

### Description of Water Delivery System

System capacity: 25cfs + cubic feet per second (cfs) **OR**  
                     gallons per minute (gpm)

Describe the current water delivery system or the system that was in place at some time within the last five years. Include information on the pumps, canals, pipelines and sprinklers used to divert, convey and apply the water at the authorized place of use. A width spanning dam diverts water into an delivery canal.

## Other Water Rights

Are there other water right certificates, water use permits or ground water registrations associated with the "from" lands? ☐ Yes ☒ No

If YES, list the certificate, water use permit, or ground water registration numbers: \_\_\_\_\_.



Pursuant to ORS 540.510, any “layered” water use such as an irrigation right that is supplemental to a primary right proposed for transfer must be included in the transfer or be cancelled. Any change to a ground water registration must be filed separately in a ground water registration modification application.

**Table 1. Location of Authorized Point(s) of Diversion (POD)**

(Note: If the POD name is not specified on the certificate, assign it a name or number here.)

Also, if the POD is not described in the Certificate, provide a description below)

POD Name or Number	Priority Date (if different between PODs)	Twp	Rng	Sec	¼ ¼	Tax Lot, DLC or Gov't Lot	Measured Distances (from a recognized survey corner)
1		35 S	1 W	35	SW SW		90 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECT 35

**Will the proposed instream transfer affect the entire water right?**

☐ Yes Then Table 2 on Page 10 does not need to be completed.

☒ No Then complete all of Table 2 to describe the portion of the water right to be changed.



Please use additional pages of Table 2 as needed. See page 8 for instructions. If you have further questions about how to fill out the tables, contact the Department at 503-986-0900 and ask for Transfer Staff.

Table 2. Description of Change to Water Right Certificate # 86767

List only the part of the right that will be changed. If more than one POD serves the lands, specify the acreage associated with each POD.

[illegible]

Additional remarks: This is a power development water right, with a single POD and a single POU (located in the NE NE QQ of Section 3, T36S R1W). The application proposes to use 16cfs of the water right for power generation, and transfer the remaining water right instream. The water right is not consumptive in use, and all water returns to Little Butte Creek.



Water Right Transfer Supplemental Form

# Waiver of Mapping Requirements



Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, Oregon 97301-1271  
(503) 986-0900  
[www.oregon.gov/OWRD](http://www.oregon.gov/OWRD)

The Director may waive or assist a transfer applicant in satisfying the mapping requirements (OAR 690-380-3100) for certain transfers if the criteria described in this form are met pursuant to OAR 690-380-3410.

This form must be prepared by the transfer applicant and the appropriate Regional Manager for the Oregon Water Resources Department. To prepare the form, a copy of the complete transfer application, including a description of the water rights to be transferred, must be provided to the Regional Manager.

This map waiver form must be signed by the Regional Manager and submitted with the transfer application.

Transfer Applicant: Trout Unlimited

Water Right(s) to be transferred: 86767

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1. The transfer **must** be one of the following. Please check the appropriate box.



An instream transfer application filed pursuant to ORS 537.348.



A transfer application necessary to complete a project funded by the Oregon Watershed Enhancement Board (OWEB) under ORS 541.375; or



The transfer application is determined and endorsed in writing by ODFW as a change that will result in a net benefit to fish and wildlife habitat.

2. For an **instream transfer application filed pursuant to ORS 537.348**, a map waiver shall only be approved if the application meets one of the following additional criteria. Please check the appropriate box.



The entirety of the right is being transferred to an instream water right and the location of the instream water right can be clearly delineated through reference to the existing point of diversion for the transferred right and other points of diversion or geographic reference points such as the mouth of the stream; or



A map meeting the requirements of the transfer rules (OAR 690-380-3100) is available showing the lands not included in the transfer and the location of the instream water right can be clearly delineated through reference to the existing point of diversion for the transferred right and other points of diversion or geographic reference points such as the mouth of the stream. (Please include copy of map(s) with transfer application.)



3. For a **transfer application meeting any one of the criteria identified in #1** (including an instream transfer application), a waiver may also be approved if other circumstances are present that make an application map unnecessary. If #2 does not apply, but circumstances are present that make an application map unnecessary, describe those circumstances below:

The water proposed for instream transfer is used for power generation. Although only a portion of the water right is proposed for instream transfer, there is a single point of diversion that is clearly marked on existing maps, and it is not necessary to identify lands for irrigation.

The water right is nonconsumptive and the proposed protection instream is solely for a point at the POD.

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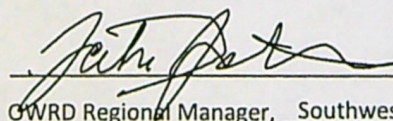
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4. For any transfer application meeting one or more of the criteria identified in #1 that does not meet the criteria for a waiver as described in #2 or #3, the Department may assist the applicant in development of the application map. The Department (through the regional office) may provide this assistance at the discretion of the appropriate Regional Manager. Please check the appropriate box below if the Department has provided assistance in development of the transfer application map:

- ☐ A map meeting the requirements of OAR 690-380-3100 has been prepared by Department staff and is included with the transfer application.
- ☐ The map provided with the transfer application has been developed with assistance from Department staff and meets the requirements of OAR 690-380-3100.

Signature: \_\_\_\_\_

  
OWRD Regional Manager, Southwest Region

Date: 1/14/2022



# Application for Water Right Transfer



Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, Oregon 97301-1266  
(503) 986-0900  
www.wrd.state.or.us

## Consent by Deeded Landowner

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State of Oregon )  
 )ss  
County of Jackson )

I Jay O'Neil in my/our capacity as President, Butte Creek Mill Foundation

mailing address PO Box 957, Eagle Point, OR 97524

telephone number (541) 690-5356, duly sworn depose and say that I/We

consent to the proposed change(s) to Water Right Certificate Number 86767

described in a Water Right Transfer Application (T-                    ),  
(transfer number, if known)

submitted by Robert Russell

on the property in tax lot number(s) 361W03AA Lot 4501

Section 3 Township 36S North/South Range 1W East/West, W.M.

located at 402 North Royal Ave., Eagle Point, OR 97524  
(site address)

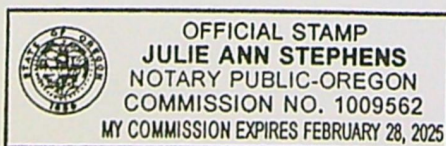
Jay O'Neil  
Signature of Affiant

8 February 2022  
Date

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Date

Subscribed and Sworn to before me this 8th day of February, 2022.



Julie Ann Stephens  
Notary Public for Oregon

My commission expires February 28, 2025





Chrysten Rivard  
Oregon Director

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FEB 14 2022

February 10, 2022

Jackson County Planning Department  
10 S. Oakdale Ave. Room #100  
Medford, OR 97501

OWRD

**Re:** Proposed Instream Transfer Application in Your Jurisdiction

To Whom It May Concern,

We are notifying you of our intent to transfer water rights to instream use. We have submitted an application to the Oregon Water Resources Department changing the type of use to instream flow for a portion of water right Certificate 86767. The water right is from Little Butte Creek, a tributary to the Rogue River. If successful, our application will protect this water instream at the point of diversion.

We propose to transfer a seasonably variable rate of 6.63 to 8.4 cfs instream while maintaining 16cfs for power generation by the Butte Creek Mill. If you have any questions regarding the proposed application, or are interested in receiving additional information, please call me at 541-973-4431.

Sincerely,

Chrysten Rivard





Chrysten Rivard  
*Oregon Director*

RECEIVED

FEB 14 2022

OWRD

February 10, 2022

City of Eagle Point, Public Works  
PO Box 779  
Eagle Point, OR 97524

**Re:** Proposed Instream Transfer Application in Your Jurisdiction

To Whom It May Concern,

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Sincerely,

Chrysten Rivard





**Chrysten Rivard**  
*Oregon Director*

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FEB 14 2022

OWRD

February 10, 2022

Oregon Water Resources Department  
725 Summer St. NE, Suite A  
Salem, OR 97301-1266

**Re:** Proposed Instream Transfer Application Certificate 86767

To Whom It May Concern,

Enclosed is an application to transfer instream a portion of Certificate 86767. Payment of the application fee should come from the Trout Unlimited Customer Account. A paper check for these funds was mailed from Arlington, VA on February 7 and should be received by the Department very shortly, if not already.

If you have any questions regarding the proposed application, or are interested in receiving additional information, please call me at 541-973-4431, or email me at [chrysten.rivard@tu.org](mailto:chrysten.rivard@tu.org).

Sincerely,

Chrysten Rivard



# Butte Creek Mill Water Supply Security and Instream Transfer

## Legend

- ★ Project Features
- Project Taxlots
- Jackson County Taxlots
- Conveyance Ditch
- Dewatered Reach (1800 ft)/Project Area



OWRD Gauge 14347798;  
Ditch Measurement Location

C86767 POD and  
New Instream Right (Point)  
Location; 42.47677, -122.79283

OWRD Gauge 14347800;  
Instream Right Measurement  
Location

Fish Screen

Little Butte Creek

Butte Creek Mill  
Taxlot 361W03AA4501  
42.47421, -122.79818

0 200 400 800 1,200 1,600  
Feet

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



# Butte Creek Mill Water Supply Security and Instream Transfer

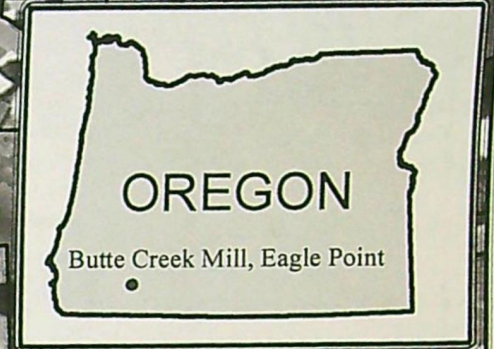
## Legend

- ★ Project Features
- Project Taxlots
- Jackson County Taxlots
- Conveyance Ditch
- Dewatered Reach (1800 ft)/Project Area

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OWRD Gauge 14347798;  
Ditch Measurement Location

C86767 POD and  
New Instream Right (Point)  
Location; 42.47677, -122.79283

OWRD Gauge 14347800;  
Instream Right Measurement  
Location

Fish Screen

Little Butte Creek

Butte Creek Mill  
Taxlot 361W03AA4501  
42.47421, -122.79818

0 200 400 800 1,200 1,600 Feet



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



STATE OF OREGON  
WATER RESOURCES DEPARTMENT

725 Summer St. N.E. Ste. A  
SALEM, OR 97301-4172

RECEIPT # 137456

(503) 986-0900 / (503) 986-0904 (fax)

INVOICE # \_\_\_\_\_

RECEIVED FROM: Trout Unlimited, Inc.  
BY: \_\_\_\_\_

APPLICATION	
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # 56091 OTHER: (IDENTIFY) ☐

TOTAL REC'D \$ 2,865.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES \$ \_\_\_\_\_  
OTHER: (IDENTIFY) \$ \_\_\_\_\_

0243 I/S Lease \_\_\_\_\_ 0244 Muni Water Mgmt. Plan \_\_\_\_\_ 0245 Cons. Water \_\_\_\_\_

4270 WRD OPERATING ACCT

MISCELLANEOUS

0407 COPY & TAPE FEES \$ \_\_\_\_\_  
0410 RESEARCH FEES \$ \_\_\_\_\_  
0408 MISC REVENUE: (IDENTIFY) \$ \_\_\_\_\_  
TC162 DEPOSIT LIAB. (IDENTIFY) \$ 2,865.00  
0240 EXTENSION OF TIME \$ \_\_\_\_\_

WATER RIGHTS:

0201 SURFACE WATER EXAM FEE 0202 \$ \_\_\_\_\_  
0203 GROUND WATER EXAM FEE 0204 \$ \_\_\_\_\_  
0205 TRANSFER EXAM FEE \$ \_\_\_\_\_

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR EXAM FEE 0219 \$ \_\_\_\_\_  
LANDOWNER'S PERMIT 0220 \$ \_\_\_\_\_

OTHER (IDENTIFY) \_\_\_\_\_

0536 TREASURY 0437 WELL CONST. START FEE

0211 WELL CONST START FEE \$ \_\_\_\_\_ CARD# \_\_\_\_\_  
0210 MONITORING WELLS \$ \_\_\_\_\_ CARD# \_\_\_\_\_

OTHER (IDENTIFY) \_\_\_\_\_

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

0233 POWER LICENSE FEE (FW/WRD) \$ \_\_\_\_\_  
0231 HYDRO LICENSE FEE (FW/WRD) \$ \_\_\_\_\_  
HYDRO APPLICATION \$ \_\_\_\_\_

TREASURY OTHER / RDX

FUND \_\_\_\_\_ TITLE \_\_\_\_\_

OBJ. CODE \_\_\_\_\_ VENDOR # \_\_\_\_\_

DESCRIPTION \$ \_\_\_\_\_

RECEIPT: 137456

DATE: 2-11-2022

BY: [Signature]

Distribution - White Copy - Customer, Yellow Copy - Fiscal, Blue Copy - File, Buff Copy - Fiscal

STATE OF OREGON  
WATER RESOURCES DEPARTMENT

725 Summer St. N.E. Ste. A  
SALEM, OR 97301-4172

RECEIPT # 137456

(503) 986-0900 / (503) 986-0904 (fax)

INVOICE # \_\_\_\_\_

RECEIVED FROM: Trout Unlimited, Inc.  
BY: \_\_\_\_\_

APPLICATION	
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # 56091 OTHER: (IDENTIFY) ☐

TOTAL REC'D \$ 2,865.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES \$ \_\_\_\_\_  
OTHER: (IDENTIFY) \$ \_\_\_\_\_

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4270 WRD OPERATING ACCT

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0408 MISC REVENUE: (IDENTIFY) \$ \_\_\_\_\_  
TC162 DEPOSIT LIAB. (IDENTIFY) \$ 2,865.00  
0240 EXTENSION OF TIME \$ \_\_\_\_\_

WATER RIGHTS:

0201 SURFACE WATER EXAM FEE 0202 \$ \_\_\_\_\_  
0203 GROUND WATER EXAM FEE 0204 \$ \_\_\_\_\_  
0205 TRANSFER EXAM FEE \$ \_\_\_\_\_

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR EXAM FEE 0219 \$ \_\_\_\_\_  
LANDOWNER'S PERMIT 0220 \$ \_\_\_\_\_

OTHER (IDENTIFY) \_\_\_\_\_

0536 TREASURY 0437 WELL CONST. START FEE

0211 WELL CONST START FEE \$ \_\_\_\_\_ CARD# \_\_\_\_\_  
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OTHER (IDENTIFY) \_\_\_\_\_

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

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0231 HYDRO LICENSE FEE (FW/WRD) \$ \_\_\_\_\_  
HYDRO APPLICATION \$ \_\_\_\_\_

TREASURY OTHER / RDX

FUND \_\_\_\_\_ TITLE \_\_\_\_\_

OBJ. CODE \_\_\_\_\_ VENDOR # \_\_\_\_\_

DESCRIPTION \$ \_\_\_\_\_

RECEIPT: 137456

DATE: 2-11-2022

BY: [Signature]

Distribution - White Copy - Customer, Yellow Copy - Fiscal, Blue Copy - File, Buff Copy - Fiscal



TROUT UNLIMITED, INC.

56091

OUR REF. NO.	YOUR INVOICE NO.	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	DISCOUNT TAKEN	NET CHECK AMOUNT
171569	2	2/1/2022	2,865.00	2,865.00	0.00	2,865.00

TROUT UNLIMITED, INC.

56091

Vendor OREGWA000

Check Date 2/4/2022

Check Number 056091

<u>Ref Nbr</u>	<u>Inv Nbr</u>	<u>Inv Date</u>	<u>Invoice Amount</u>	<u>Amount Paid</u>	<u>Disc Taken</u>	<u>Net Check Amt</u>
171569	2	2/1/2022	2,865.00	2,865.00	0.00	2,865.00

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## Part 1 of 6 – Minimum Requirements Checklist



**Oregon Water Resources Department**  
725 Summer Street NE, Suite A  
Salem, Oregon 97301-1266  
(503) 986-0900  
[www.oregon.gov/OWRD](http://www.oregon.gov/OWRD)

**This transfer application will be returned if Parts 1 through 6 and all required attachments are not completed and included.**  
For questions, please call (503) 986-0900, and ask for Transfer Section.

## FOR ALL INSTREAM TRANSFER APPLICATIONS

Check all items included with this application. (N/A = Not Applicable)

☒

### Part 1 – Completed Minimum Requirements Checklist.

☒

## Part 2 – Completed Map Checklist.

☒

Part 3 – Application Fee, payable by check to the Oregon Water Resources Department, and completed Fee Worksheet, page 3. Try the new online fee calculator at: [http://apps.wrd.state.or.us/apps/misc/wrd\\_fee\\_calculator](http://apps.wrd.state.or.us/apps/misc/wrd_fee_calculator). If you have questions, call Customer Service at (503) 986-0801.

Note: Instream transfers are considered both a change in place of use and character of use. In addition, an automatic 50% fee waiver applies to all instream transfers.

☒

Part 4 – Completed Applicant Information and Signature.

☒

### Part 5 – Completed Instream Use Information.

☒

Part 6 – Information about the Transferred Water Rights: How many water rights are to be transferred? 1 List them here: Certificate 86767

Please include a separate Part 6 for each water right. (See instructions on page 8)

Attachments:

☒

Completed Instream Transfer Application Map.

☒

Completed Evidence of Use Affidavit and supporting documentation.

☒

☐ N/A Affidavit(s) of Consent from Landowner(s) (if the applicant does not own the land the water right is on.)

☐

☒ N/A Supplemental Form D – For water rights served by or issued in the name of an irrigation district. Complete when the transfer applicant is not the irrigation district.

☒

Land Use Notice - Notice of the intent to file an instream transfer application must be provided to each affected local government along the proposed reach. Copies of the notices must be enclosed with the instream transfer application.

(For Staff Use Only)

WE ARE RETURNING YOUR APPLICATION FOR THE FOLLOWING REASON(S):

Application fee not enclosed/insufficient

Map not included or incomplete

Land Use Form not enclosed or incomplete

Additional signature(s) required

Part \_\_\_\_\_ is incomplete

Other/Explanation \_\_\_\_\_

Staff: \_\_\_\_\_ 503- \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_



## Part 2 of 6 – Map Checklist

Your transfer application will be returned if any of the map requirements listed below are not met.

Please be sure that the transfer application map you submit includes all the required items and matches the existing water right map. Check all boxes that apply.

- ☐ ☒ N/A Certified Water Right Examiner (CWRE) Stamp and Original Signature. For list of CWREs see [http://apps.wrd.state.or.us/apps/wr/cwre\\_license\\_view/](http://apps.wrd.state.or.us/apps/wr/cwre_license_view/).
- OR
- ☒ ☐ N/A Waiver of requirement that map be prepared by a CWRE. Completed map waiver form is signed by the Department's Regional Manager and included in the application. The map **must** still meet Department mapping requirements described below.
- ☐ ☒ N/A If **more than three** water rights are involved, separate maps are needed for each water right.
- ☐ Permanent quality printed with dark ink on good quality paper.
- ☐ The size of the map can be 8½ x 11 inches, 8½ x 14 inches, 11 x 17 inches, or up to 30 x 30 inches. For 30 x 30 inch maps, one extra copy is required.
- ☐ A north arrow, a legend, and scale.
- ☐ The scale of the map must be: 1 inch = 400 feet, 1 inch = 1,320 feet, the scale of the Final Proof/Claim of Beneficial Use Map (the map used when the permit was certificated), the scale of the county assessor map if the scale is not smaller than 1 inch = 1,320 feet, or a scale that has been pre-approved by the Department.
- ☐ Township, Range, Section, quarter-quarter, DLC, Government Lot, and other recognized public land survey lines.
- ☐ Tax lot boundaries (property lines) are required. Tax lot numbers are recommended.
- ☐ Major physical features including rivers and creeks showing direction of flow, lakes and reservoirs, roads, and railroads.
- ☐ Major water delivery system features from the point(s) of diversion/appropriation such as main pipelines, canals, and ditches.
- ☐ Existing place of use that includes separate hachuring for each water right, priority date and use including number of acres in each quarter-quarter section, government lot, or in each quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If less than the entirety of the water right is being changed, a separate hachuring is needed for lands left unchanged.
- ☐ Existing diversion point(s) with distance and bearing or coordinates from a recognized survey corner. This information can generally be found in your water right certificate or permit.

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# Part 3 of 6 – Fee Worksheet

FEE WORKSHEET for INSTREAM TRANSFER			
1	Base Fee (includes Place of Use and Character of Use to Instream changes to one water right for up to 1 cfs)	1	\$2,450
2	Number of water rights included in transfer <u>1</u> (2a) Subtract 1 from the number in 2a above: <u>0</u> (2b) <i>If only one water right, this will be 0</i> Multiply line 2b by \$610 and enter » » » » » » » » » » » » » » »	2	\$0
3	Enter the cfs for the portions of the rights to be transferred (see example below*): <u>8.4</u> (3a) Subtract 1.0 from the number in 3a above: <u>7.4</u> (3b) If 3b is 0, enter 0 on line 3 » » » » » » » » » » » » » » » If 3b is greater than 0, round up to the nearest whole number: <u>8</u> (3c) and multiply 3c by \$410, then enter on line 3 » » » » » » » » » » » » » » »	3	\$3,280
4	Add entries on lines 1 through 3 above » » » » » » » » » » Subtotal:	4	\$5,730
5	Multiply line 4 by 0.5 and enter on line 5 » » » » » » » » » » » » » » »	5	\$2,865
6	Subtract line 5 from line 4 » » » » » » » » » » » » » » » Transfer Fee:	6	\$2,865

\*Example for Line 3a calculation to transfer 45.0 acres of Primary Certificate 12345 (total 1.25 cfs for 100 acres) and 45.0 acres of Supplemental Certificate 87654 (1/80 cfs per acre) on the same land:

- For irrigation calculate cfs for each water right involved as follows:
  - Divide total authorized cfs by total acres in the water right (for C12345,  $1.25 \text{ cfs} \div 100 \text{ ac}$ ); then multiply by the number of acres to be transferred to get the transfer cfs ( $\times 45 \text{ ac} = 0.56 \text{ cfs}$ ).
  - If the water right certificate does not list total cfs, but identifies the allowable use as 1/40 or 1/80 of a cfs per acre; multiply number of acres proposed for change by either 0.025 (1/40) or 0.0125 (1/80). (For C87654,  $45.0 \text{ ac} \times 0.0125 \text{ cfs/ac} = 0.56 \text{ cfs}$ )
- Add cfs for the portions of water rights on all the land included in the transfer; however **do not count cfs for supplemental rights on acreage for which you have already calculated the cfs fee for the primary right on the same land**. The fee should be assessed only once for each "on the ground" acre included in the transfer. (In this example, blank 3a would be only 0.56 cfs, since both rights serve the same 45.0 acres. Blank 3b would be 0 and Line 3 would then also become 0).

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## Part 4 of 6 – Applicant Information and Signature

Is this a ☒ Permanent Instream Transfer or ☐ Time-Limited Instream Transfer?

### Applicant Information

APPLICANT/BUSINESS NAME Robert Russell			PHONE NO. (503) 880-2147	ADDITIONAL CONTACT NO.
ADDRESS PO Box 1			FAX NO.	
CITY Eagle Point	STATE OR	ZIP 97524	E-MAIL rrussell1950@aol.com	
<p style="text-align: right; color: blue; font-weight: bold;">RECEIVED FEB 11 2022 OWRD</p>				
<p><b>BY PROVIDING AN E-MAIL ADDRESS, CONSENT IS GIVEN TO RECEIVE ALL CORRESPONDENCE FROM THE DEPARTMENT ELECTRONICALLY. COPIES OF THE FINAL ORDER DOCUMENTS WILL ALSO BE MAILED.</b></p>				

**Agent Information** – The agent is authorized to represent the applicant in all matters relating to this application.

AGENT/BUSINESS NAME Chrysten Rivard, Oregon Director Trout Unlimited			PHONE NO. (541) 973-4431	ADDITIONAL CONTACT NO.
ADDRESS 633 Iowa St.			FAX NO.	
CITY Ashland	STATE OR	ZIP 97520	E-MAIL chrysten.rivard@tu.org	
<p><b>BY PROVIDING AN E-MAIL ADDRESS, CONSENT IS GIVEN TO RECEIVE ALL CORRESPONDENCE FROM THE DEPARTMENT ELECTRONICALLY. COPIES OF THE FINAL ORDER DOCUMENTS WILL ALSO BE MAILED.</b></p>				

Explain in your own words what you propose to accomplish with this transfer application, and why:  
We propose to transfer instream the portion of Certificate 86767 that exceeds 16cfs, which will be retained for the current purpose of power development. We propose to protect the water instream at the Point of Diversion.

If you need additional space, continue on a separate piece of paper and attach to the application as "Attachment 1".

☐ Check this box if this project is fully or partially funded by the American Recovery and Reinvestment Act. (Federal stimulus dollars)

### Check one box

- ☒ By signing this application, I understand that, upon receipt of the draft preliminary determination and prior to Department approval of the transfer, I will be required to provide landownership information and evidence that I am authorized to pursue the transfer as identified in OAR 690-380-4010(5); **OR**
- ☐ I affirm the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; **OR**
- ☐ I affirm that the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the water right proposed for transfer is appurtenant and have supporting documentation.

I understand that prior to Department approval of the transfer, I may be required to submit payment to the Department for publication of a notice in a newspaper with general circulation in the area where the water right is located, once per week for two consecutive weeks. If more than one qualifying newspaper is available, I suggest publishing the notice in the following newspaper: Medford Mail Tribune.

**I (we) affirm that the information contained in this application is true and accurate.**

_____ Applicant Signature	Robert Russell _____ Print Name (and Title if applicable)	_____ Date
_____ Applicant Signature	Chrysten Rivard, OR Director _____ Print Name (and Title if applicable)	_____ Date

Is the applicant the sole owner of the land on which the water right, or portion thereof, proposed for transfer is located? ☐ Yes ☒ No *If NO, include signatures of all deeded landowners (and mailing and/or e-mail addresses if different than the applicant's) or attach affidavits of consent (and mailing and/or e-mail addresses) from all landowners or individuals/entities to which the water right(s) were conveyed.*



Check the following boxes that apply:

- ☐ Check here if any of the water rights proposed for transfer are located within or served by an irrigation district or other water district before the transfer. (Tip: Complete and attach Supplemental Form D.)

IRRIGATION DISTRICT NAME	ADDRESS	
CITY	STATE	ZIP

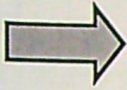
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- ☐ Check here if water for any of the rights is supplied under a water service agreement or other contract for stored water with a federal agency or other entity.

ENTITY NAME	ADDRESS	
CITY	STATE	ZIP



To meet State Land Use Consistency Requirements, you must list all local governments (each county, city, municipal corporation, or tribal government) within whose jurisdiction the proposed instream reach will be located.

ENTITY NAME City of Eagle Point, Public Works	ADDRESS P.O. Box 779	
CITY Eagle Point	STATE OR	ZIP 97524

ENTITY NAME Jackson County	ADDRESS 10 South Oakdale Ave.	
CITY Medford	STATE OR	ZIP 97501

ENTITY NAME	ADDRESS	
CITY	STATE	ZIP

ENTITY NAME	ADDRESS	
CITY	STATE	ZIP

ENTITY NAME	ADDRESS	
CITY	STATE	ZIP



## Part 5 of 6 – Proposed Instream Use Information

Identify the Public Use for which the instream right is requested (check at least one box):

- ☒ Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
- ☐ Recreation
- ☐ Navigation
- ☐ Pollution Abatement

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Instream use proposed to be created by the instream transfer:

Originating Water Right Number (as identified in Part 5)	Priority Date	Source	Proposed Instream Period	Rate (cfs)*	Volume (ac-ft)**
Certificate 86767	1872	Little Butte Creek	November 1 through March 31	8.4	2,515.83
Certificate 86767	1872	Little Butte Creek	April 1 through October 31	6.63	2,814.19
<b>TOTAL VOLUME</b>					5330.02

**\*Tip:** To calculate rate (if other than the rate allowed by the right), divide the volume by the number of days in the period and then divide by 1.983471; or

**\*\*Tip:** To calculate volume, multiply the rate by the number of days in the instream period and then multiply by 1.983471.

Note: The instream rate may not exceed the max rate allowed by the existing right(s) and the total volume may not exceed to max volume or duty allowed by the existing right(s).

Additional Information: \_\_\_\_\_.

Identify the location of the proposed instream water right.

- ☒ Water is requested to be protected at a point.  
Location (i.e. the point of diversion (POD) – use the POD Name or Number from Table 1): \_\_\_\_\_.
- ☐ Water is requested to be protected within a reach:  
Location of proposed reach (If an instream water right reach is requested, identify the upstream and downstream extent of the reach): \_\_\_\_\_.

Recommendations for conditions on the instream use to avoid taking away or impairing existing water rights.

- ☒ None
- ☐ Other (such conditions may include, but are not limited to, reductions in the instream flow levels in cfs per month or total ac-ft, the effective reach(es) or lake levels of the instream flow, measuring locations and the strategy for monitoring the instream flow or lake levels): \_\_\_\_\_.



Are there any existing instream water rights on the same point or within the same requested reach(es) or lake, or on a portion thereof?

☐ No ☒ Yes (identify other instream water rights): IS 88945

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Note: New instream water rights are generally (but not always) additive to instream water rights established under ORS 537.348 (instream transfer application process) and ORS 537.470 (allocation of conserved water) and replace a portion of instream water rights established under ORS 537.341 (state agency application process) or ORS 537.346 (conversion of minimum perennial streamflows) with an earlier priority date.

Is it your intent to have the proposed instream water right transfer be additive to any instream water right established under ORS 537.348 and ORS 537.470 and replace a portion of any instream water right established under ORS 537.341 and ORS 537.346 with an earlier priority date?

☒ Yes ☐ No. If no, please explain your intent: \_\_\_\_\_.

If the proposed conversion would add to the amounts of an existing instream water right(s) established under ORS 537.341 or 537.346, provide documentation demonstrating why additional instream flows are necessary. Supporting documentation should include information from the Oregon Dept. of Fish and Wildlife (ODFW) (fish life), Dept. of Environmental Quality (DEQ) (pollution abatement), and/or Parks and Recreation Dept. (recreation).

Is the requested instream flow intended to exceed the estimated average natural flow or level occurring from the drainage system?

- ☒ No; OR
- ☐ Yes (Provide supporting documentation that demonstrates why additional flows are significant for the public use requested.); OR
- ☐ Yes, and it is presumed that flows that exceed the estimated average natural flow or natural lake levels are significant because:
- ☐ The requested flow does not exceed the maximum amount of any instream water right application applied for under ORS 537.341 (state agency instream water right application process) for the same reach or portion thereof, and the requested public use is for the same public use as the afore mentioned instream water right application, and
  - ☐ For the specified time period that flows are requested to exceed the estimated average natural flow or lake level, the stream is in an ODFW flow restoration priority watershed. A copy of the priority watershed map indicating the specific watershed involved should be included with the application. Priority watershed maps may be found on the OWRD web page; or
  - ☐ The stream is listed as water quality limited and DEQ has provided scientific information that demonstrates that increased flows would improve water quality. The scientific information provided by DEQ should be included with the transfer application.

For a Time Limited Instream Transfer, please answer the following:

☐ The time-limited instream transfer is for a specific number of years:  
\_\_\_\_\_ Begin Year to \_\_\_\_\_ End Year

☐ Time-limited instream transfer is to terminate based upon other conditions:  
Conditions: \_\_\_\_\_.



## INSTRUCTIONS for editing the Application Form

To add additional lines to tables within the forms or to copy and paste additional Part 6 pages, please **save the application form to your computer**. Unlock the document by using one of the following instructions for your Microsoft Word software version:

### Microsoft Word 2003

Unlock the document by one of the following:

- Using the **Tools** menu => click **Unprotect Document**;  
**OR**
- Using the **Forms** toolbar => click on the **Protect/Unprotect** icon.

To relock the document to enable the checkboxes to work, you will need to:

- Using the **Tools** menu => click **Protect Document**;  
**OR**
- Using the **Forms** toolbar => click on the **Protect/Unprotect** icon.

### Microsoft Word 2007

- Unlock the document by clicking the **Review** tab, then click **Protect Document**, then click **Stop Protect**
- To relock the document, click **Editing Restrictions**, then click **Allow Only This Type of Editing**, select **Filling In Forms** from the drop-down menu, then check **Yes, Start Enforcing Protection**.

### Microsoft Word 2010

- Unlock the document by clicking the **Review** tab, toggle the **Restrict Editing** icon at the upper right, then click **Stop Protect** at the bottom right. Then uncheck the "Allow only this type of editing in the document: **Filling in forms**" in the "Editing restrictions" section on the right-hand list of options.
- To relock the document, check the **Editing Restrictions/Allow Only This Type of Editing/Filling In Forms** box from the drop-down menu, then check **Yes, Start Enforcing Protection**. You do not need to assign a password for the editing restrictions.

### Other Alternatives:

- Photocopy pages or tables in Part 6, ~~mark-through~~ any non-applicable information, insert/attach photocopied pages to document in the appropriate location, and manually amend page numbers as necessary (e.g. Page 5 6 of 9 10).
- You may refer to additional attachments that you may include, such as separately produced tables or spreadsheets to convey large numbers of rows of place of use listings, owner/property parcels, etc. You may contact the Department at 503-986-0900 and ask for Transfer Staff if you have questions.

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Once the application has been unlocked, you may:

- add additional rows to tables using the Table tools, and
- select and copy the pages of Part 6 and paste as many additional sets of Part 6 pages as needed at the end of the application.

After editing, re-lock the document to enable checkboxes to work.



## Part 6 of 6 – Water Right Information

Please use a separate Part 6 for each water right being changed. See instructions on page 8, to copy and paste additional Part 6s, or to add additional rows to tables within the form.

CERTIFICATE # 86767

**Name on Certificate:** Robert E Russell and Deborah S. Russell

Date(s) of Priority: 1872

Source(s) of Water to be Affected by the Transfer: Little Butte Creek

### Description of Water Delivery System

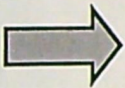
System capacity: \_\_\_\_\_ cubic feet per second (cfs) OR  
\_\_\_\_\_ gallons per minute (gpm)

Describe the current water delivery system or the system that was in place at some time within the last five years. Include information on the pumps, canals, pipelines and sprinklers used to divert, convey and apply the water at the authorized place of use. A width spanning dam diverts water into an irrigation canal.

## Other Water Rights

Are there other water right certificates, water use permits or ground water registrations associated with the "from" lands? ☐ Yes ☒ No

If YES, list the certificate, water use permit, or ground water registration numbers:\_\_\_\_\_.



Pursuant to ORS 540.510, any “layered” water use such as an irrigation right that is supplemental to a primary right proposed for transfer must be included in the transfer or be cancelled. Any change to a ground water registration must be filed separately in a ground water registration modification application.

Table 1. Location of Authorized Point(s) of Diversion (POD)

(Note: If the POD name is not specified on the certificate, assign it a name or number here.)

Also, if the POD is not described in the Certificate, provide a description below)

POD Name or Number	Priority Date (if different between PODs)	Twp	Rng	Sec	¼ ¼	Tax Lot, DLC or Gov't Lot	Measured Distances (from a recognized survey corner)
1		35 S	1 W	35	SW SW		90 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECT 35

Will the proposed instream transfer affect the entire water right?

☐ Yes Then Table 2 on Page 10 does not need to be completed.

☒ No Then complete all of Table 2 to describe the portion of the water right to be changed.



Please use additional pages of Table 2 as needed. See page 8 for instructions. If you have further questions about how to fill out the tables, contact the Department at 503-986-0900 and ask for Transfer Staff.

Table 2. Description of Change to Water Right Certificate # 86767

List only the part of the right that will be changed. If more than one POD serves the lands, specify the acreage associated with each POD.

[illegible]

Additional remarks: This is a power development water right, with a single POD and a single POU (located in the NE NE QQ of Section 3, T36S R1W). The application proposes to use 16cfs of the water right for power generation, and transfer the remaining water right instream. The water right is not consumptive in use, and all water returns to Little Butte Creek.



OREGON WATER RESOURCES DEPARTMENT  
**ACCOUNT ACTIVITY RECORD**

Account Name: TU – Trout Unlimited– CA0034

Activity Date: February 14, 2022

*Please complete and leave at the WRIG counter.*

Transaction Description		Project Name	Customer contact name	Department personnel providing service	Amount of Activity
Deposit to account					
Copying					
<b>Other: Instream Transfer Application</b>	<b>1</b>	T-13920-Russell-TU: 1 @\$2,865.00 ea.	<b>Chrysten Rivard</b>	Stacy Phillips For Sarah Henderson	<b>Total: \$2,865.00</b>