

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13778, Washington County)	PROPOSING APPROVAL OF ADDITIONAL
)	POINTS OF DIVERSION AND CHANGE IN
)	PLACES OF USE

Authority

Oregon Revised Statutes (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

OREGON BERRY PACKING, INC.
C/O JEFF MALENSKY
PO BOX 1326
HILLSBORO, OR 97123

Findings of Fact

1. On July 13, 2021, OREGON BERRY PACKING, INC. c/o Jeff Malensky filed an application for additional points of diversion and to change the place of use under Certificates 94282, 94550, 94551, 88122, and to change the place of use under Certificates 83064 and 62442. The Department assigned the application number T-13778.
2. Notice of the application for transfer was published on August 17, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. When the application was filed, evidence demonstrating that Land Use approval has been obtained, as required under OAR 690-380-3000(19), was not provided to the Department. Maps for Certificates 94551 and 94550 included acreage that moved as a result of transfer T-12780.
4. On February 16, 2023, the Department notified the applicant's agent, by email, of the deficiencies in the application. The Department gave the applicant until March 16, 2023, to resolve the deficiencies.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, of this preliminary determination.

5. On March 3, 2023, the Department received amended application pages, resolving the deficiencies.
6. On April 18, 2024, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13778 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 18, 2024, 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.
7. On April 30, 2024, the applicant's agent requested a new completion date of October 1, 2030, due to the complexities of the project. Pursuant to OAR 690-380-5140(3), the Department has modified the completion date of Transfer Application T-13778 to October 1, 2030.
8. On November 27, 2024, The Department noticed a discrepancy in the rate of water being changed under Certificate 83064, prompting a revised Draft Preliminary Determination.
9. On December 10, 2024, the Department sent a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-13778 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 11, 2025, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.
10. Tualatin Valley Irrigation District manages distribution of water under Certificate 88122. This certificate does not include a description of the point of diversion (POD) at the point of release of water from the storage source (Scoggins Reservoir), nor the PODs at the locations on the Tualatin River where patrons divert stored water directly from the river.
11. The application provides the POD location on the Tualatin River where the patron is diverting the stored water from Scoggins Reservoir directly from the river.
12. The draft Preliminary Determination sent December 10, 2024, did not include the identified layering of Certificates 62442, 83064, and Registration Application GR-478 (Certificate of Registration GR-460).
13. On June 11, 2025, the applicant's agent notified the Department Certificate 62442 is also acting as a supplemental water right under this transfer. Its period of use is during the non-irrigation season, and will be moving the place of use to "like" primary Certificates 94282, 94550, and 94551 pursuant to OAR 690-382-0200(5).

14. On June 17, 2025, the applicant's agent notified the Department that Certificate 83064 is a primary right to make up a deficiency in rate under Registration Application GR-478 (Certificate of Registration GR-460). As stated on January 29, 1987, the points of appropriation for Registration Application GR-478 (Certificate of Registration GR-460) do not produce enough water for the authorized places of use under Certificate 83064's application (G-11597) Addendum B (Addendum). Certificate 83064 and Registration Application GR-478 (Certificate of Registration GR-460) have places of use that are moving together pursuant to OAR 690-382-0200(1).

15. On July 3, 2025, the Department found further evidence in the physical file of Certificate 83064. An addendum shows that the rate for each well under Registration Application GR-478 (Certificate of Registration GR-460) has been diminished to lessen the amount of sand pumped by each well. The wells were diminished to:

Well Name	Initial Well Rate (GPM)	Diminished Well Rate (GPM)
Well #1	100 GPM	20 GPM
Well #2	60 GPM	20 GPM
Well #3	150 GPM	25 GPM
Well #4	100 GPM	30 GPM

16. In a letter to the applicant of G-11597 dated March 19, 1987 (1987 Letter), the Department stated that the applicant was unable to formally apply for a change in points of appropriation for Registration Application GR-478 (Certificate of Registration GR-460), and to file a new application to protect the applicant's development at that time.

17. Because the applicant for Certificate 83064 was previously instructed by the Department to file a new application to develop new wells and diminish the rate in the authorized points of appropriation in Registration Application GR-478 (Certificate of Registration GR-460) to account for the new wells in Certificate 83064, the Department finds that there is no need to further diminish Certificate 83064 to a supplemental irrigation right under OAR 690-380-5120.

18. Finally, in the 1987 Letter, the Department had concluded that Wells #5, #6, and #7 all developed the same aquifer (source) as Wells #1, #2, #3, and #4, therefore, showing the application was for an additional primary right to make up the new deficiency in rate for GR-478.

19. Because Certificate 83064 was filed to make up for the deficiency in Registration Application GR-478 (Certificate of Registration GR-460), and language in Certificate 83064, states that "The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated...", moving these two primary water rights to the transfers' proposed places of use would not cause enlargement of either right, or claim.

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

Certificate: 94282 in the name of C. B. BUCHANAN (perfected under Permit S-15058)
Use: IRRIGATION OF 3.0 ACRES
Priority Date: AUGUST 20, 1941
Rate: 0.04 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.
Source: TUALATIN RIVER, tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot
1 S	3 W	WM	3	SE SE	1

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	3 W	WM	3	SW SE	3.0

21. Transfer Application T-13778 proposes an additional point of diversion approximately 8.5 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	2 W	WM	18	NE SE	POD OB - 1435 FEET NORTH AND 1260 FEET WEST FROM THE SE CORNER OF SECTION 18

22. Transfer Application T-13778 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	2 W	WM	18	SE SW	3.0

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

Certificate: 94550 in the name of C. B. BUCHANAN, JR. (perfected under Permit S-20595)
Use: IRRIGATION OF 9.7 ACRES
Priority Date: JULY 16, 1951
Rate: 0.13 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to

exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: TUALATIN RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot
1 S	3 W	WM	3	SE SE	1

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
1 S	3 W	WM	3	NW SE		49	0.7
1 S	3 W	WM	3	SW SE	2		1.5
1 S	3 W	WM	3	SW SE		49	5.4
1 S	3 W	WM	3	SE SE		49	0.3
1 S	3 W	WM	3	SE SE	1		1.8
TOTAL							9.7

24. Transfer Application T-13778 proposes an additional point of diversion approximately 8.5 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	2 W	WM	18	NE SE	POD OB - 1435 FEET NORTH AND 1260 FEET WEST FROM THE SE CORNER OF SECTION 18

25. Transfer Application T-13778 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	2 W	WM	19	NW NE	9.7

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

Certificate: 94551 in the name of C. B. BUCHANAN, JR. (perfected under Permit S-21189)
Use: IRRIGATION OF 37.1 ACRES
Priority Date: MARCH 18, 1952
Rate: 0.46 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: TUALATIN RIVER, a tributary of WILLAMETTE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
1 S	3 W	WM	3	NE SW	46

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 S	3 W	WM	3	NE SW	46	7.7
1 S	3 W	WM	3	SE SW	46	21.4
1 S	3 W	WM	3	SW SE	46	8.0
TOTAL						37.1

27. Transfer Application T-13778 proposes an additional point of diversion approximately 8.5 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	2 W	WM	18	NE SE	POD OB - 1435 FEET NORTH AND 1260 FEET WEST FROM THE SE CORNER OF SECTION 18

28. Transfer Application T-13778 also proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
1 S	2 W	WM	18	SE SW	3		13.8
1 S	2 W	WM	18	SW SE			5.6
1 S	2 W	WM	19	NE NW		63	10.5
1 S	2 W	WM	19	NE NW	1		7.2
TOTAL							37.1

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

Certificate: 88122 in the name of US BUREAU OF RECLAMATION (perfected under Permit S-35792)

Use: SUPPLEMENTAL IRRIGATION OF 8.7 ACRES WITHIN TUALATIN VALLEY IRRIGATION DISTRICT

Priority Date: FEBRUARY 20, 1963

Rate: 0.108 CUBIC FOOT PER SECOND FROM SCOGGINS CREEK AND RESERVOIR

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one cubic foot per second per acre or its equivalent for each acre irrigated from direct flow and shall be further limited to a diversion of not to exceed 2.5 acre-feet for each acre irrigated during the irrigation season of each year from direct flow and storage from the reservoir constructed under Permit R-5777 and as evidenced by Certificate 81149; provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein. The right is further limited to the use of stored water only on the lands described as supplemental irrigation.

Source: SCOGGINS CREEK, AND SCOGGINS RESERVOIR/HENRY HAGG LAKE (Constructed under Permit R-5777), tributaries to the TUALATIN RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
<i>Not described in certificate</i>					

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	3 W	WM	3	NE SW	0.1
1 S	3 W	WM	3	SE SW	8.6
TOTAL					8.7

30. The application for T-13778 provided a better description of the current point of diversion where the patron is diverting the stored water from Scoggins Reservoir directly from the river for Certificate 88122:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
1 S	3 W	WM	3	NE SW	R-50.1 (POD 2) – 1500 FEET NORTH AND 3080 FEET WEST FROM THE SE CORNER OF SECTION 3

31. Transfer Application T-13778 proposes an additional point of diversion approximately 9.5 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	2 W	WM	18	NE SE	POD OB - 1435 FEET NORTH AND 1260 FEET WEST FROM THE SE CORNER OF SECTION 18

32. Transfer Application T-13778 also proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	2 W	WM	19	NE NW	8.7

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

Certificate: 83064 in the name of OREGON BERRY PACKING CO. (perfected under Permit G-10711)

Use: IRRIGATION OF 41.0 ACRES

Priority Date: NOVEMBER 12, 1986

Rate: 105.0 GALLONS PER MINUTE (GPM), BEING 20.0 GPM FROM WELL #5, 25.0 GPM FROM WELL #6, AND 60.0 GPM FROM WELL #7, NOT TO EXCEED 105.0 GPM FOR IRRIGATION

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: WELL #5, WELL #6, AND WELL #7 in the WILLAMETTE BASIN

Authorized Points of Diversion:

Well	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
5	1 S	2 W	WM	18	SE SW	3	880 FEET SOUTH AND 780 FEET EAST FROM THE NE CORNER OF NC RICHARDSON DLC 63
6	1 S	2 W	WM	19	NW NE	1	1640 FEET SOUTH AND 1350 FEET EAST FROM THE NE CORNER OF NC RICHARDSON DLC 63
7	1 S	2 W	WM	19	NW NE		1710 FEET SOUTH AND 1420 FEET EAST FROM THE NE CORNER OF NNC RICHARDSON DLC 63

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
1 S	2 W	WM	18	SE SW	3		3.0
1 S	2 W	WM	18	SW SE			4.4
1 S	2 W	WM	19	NW NE			13.2
1 S	2 W	WM	19	NE NW		63	11.4
1 S	2 W	WM	19	NE NW	1		9.0
TOTAL							41.0

34. Transfer Application T-13778 proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
1 S	2 W	WM	18	SW SW	3		0.6
1 S	2 W	WM	18	SW SW		63	3.8
1 S	2 W	WM	19	NW NW		63	25.5
1 S	2 W	WM	19	SW NW		63	11.1
TOTAL							41.0

35. The sixth right to be transferred is as follows:

Certificate: 62442 in the name of OREGON BERRY PACKING COMPANY (perfected under Permit G-8141)

Use: IRRIGATION OF 43.7 ACRES DURING THE NON-IRRIGATION SEASON

Priority Date: MARCH 10, 1977

Period of Use: NON-IRRIGATION SEASON

Rate: 0.55 CUBIC FOOT PER SECOND (CFS), BEING 0.13 CFS FROM WELL 1, 0.08 CFS FROM WELL 2, 0.20 CFS FROM WELL 3, AND 0.14 CFS FROM WELL 4

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 1.0 acre-feet per acre for each acre irrigated during the period from October 1 to April 30. The right allowed herein, together with the amount secured under any other right existing for the same land shall not exceed 2.5 acre feet for each acre irrigated in any one year. The use of water during the period from October 1 to April 30 as authorized herein shall not establish priority of right against future

appropriations of ground water for beneficial uses other than similar rights for irrigation.

Source: FOUR WELLS, in the TUALATIN RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Glott	Measured Distances
1 S	2 W	WM	18	SE SW	3	WELL 1 - 900 FEET SOUTH AND 760 FEET EAST FROM THE NORTH NORTHERLY CORNER OF DLC 63
1 S	2 W	WM	18	SE SW	3	WELL 2 - 1010 FEET SOUTH AND 790 FEET EAST FROM THE NORTH NORTHERLY CORNER OF DLC 63
1 S	2 W	WM	19	NW NE		WELL 4 - 1340 FEET SOUTH AND 2000 FEET EAST FROM THE NORTH NORTHERLY CORNER OF DLC 63
1 S	2 W	WM	19	NE NW	1	WELL 3 - 1580 FEET SOUTH AND 1340 FEET EAST FROM THE NORTH NORTHERLY CORNER OF DLC 63

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Glott	Acres
1 S	2 W	WM	18	SE SW		3	4.6
1 S	2 W	WM	18	SW SE			4.8
1 S	2 W	WM	19	NW NE			13.2
1 S	2 W	WM	19	NE NW	63		12.0
1 S	2 W	WM	19	NE NW		1	9.1
TOTAL							43.7

36. Transfer Application T-13778 proposes to change the place of use of the right to:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	DLC	Glott	Tax Lot	Acres
1 S	2 W	WM	18	SE SW		3	200	7.8
1 S	2 W	WM	18	SE SW		3	800	5.3
1 S	2 W	WM	18	SW SE			200	1.5
1 S	2 W	WM	18	SW SE			800	1.7
1 S	2 W	WM	19	NW NE			200	9.7
1 S	2 W	WM	19	NE NW	63		200	10.8
1 S	2 W	WM	19	NE NW		1	200	6.9
TOTAL								43.7

37. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost share funds.

Transfer Review Criteria [OAR 690-380-0100(14), 690-380-4010(2), 690-380-2110(2), and 690-380-2200]

38. Water has been used within the five-year period prior to submittal of Transfer Application T-13778 according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

39. Water delivery systems sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-13778.
40. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
41. The proposed point of diversion diverts water from the same source of surface water as the authorized points of diversion, as required by OAR 690-380-2110(2).
42. Registration Application GR-478 (Certificate of Registration GR-460) does not have language regarding the limit/duty, however, language in layered Certificate 83064, states that, "The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated and shall be further limited to a diversion of 2.5 acre feet per acre for each acre irrigated..." Because of this condition, moving these two primary water rights to the transfers' proposed places of use would not cause enlargement of either right.
43. The proposed changes, as conditioned, would not result in enlargement of the rights.
44. The proposed changes, as conditioned, would not result in injury to other existing water rights.
45. All other application requirements are met.

Determination and Proposed Action

The additional points of diversion and change in places of use proposed in Transfer Application T-13778 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-13778 is approved, the final order will include the following:

1. *The additional points of diversion and change in places of use proposed in Transfer Application T-13778 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 94451, 94550, 94282, 88122, 83064, and 62442 and any related decree.*
3. *Water right Certificates 94551, 94550, 94282, 83064, and 62442 are cancelled. New certificates will be issued for Certificates 94550, 94551 and 83064 describing the portions of these rights not affected by this transfer.*

4. *Water right Certificate 88122 is modified. A superseding water right certificate in the name of U.S. Bureau of Reclamation will be issued when the Department determines it is necessary for record keeping.*
5. *Under Certificate 88122, the quantity of water diverted at the new additional point of diversion (POD OB), together with that diverted at the original point of diversion (R-50.1 (POD 2)), shall not exceed the quantity of water lawfully available at the original point of diversion (R-50.1 (POD 2)).*
6. *Under Certificate 94282, the quantity of water diverted at the new additional point of diversion (POD OB), together with that diverted at the original point of diversion (POD 1), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 1).*
7. *Under Certificate 94550, the quantity of water diverted at the new additional point of diversion (POD OB), together with that diverted at the original point of diversion (POD 1), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 1).*
8. *Under Certificate 94551, the quantity of water diverted at the new additional point of diversion (POD OB), together with that diverted at the original point of diversion (POD 2), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 2).*
9. *Water shall be acquired from the same source of surface water as the original points of diversion.*
10. *The former place of use of the transferred rights shall no longer receive water under the rights.*
11. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

12. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2030**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.*

13. *Water Right Certificate 88122 is modified. After satisfactory proof of completion has been determined by the Department, a superseding right certificate will be issued in the name of U.S. Bureau of Reclamation when the Department determines it is necessary for record keeping.*
14. *For Water Right Certificates 94551, 94550, 94282, 83064, and 62442, after satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on **SEP 05 2025**



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

This Preliminary Determination was prepared by Dante Luongo. If you have questions about the information in this document, you may reach me at 971 304-5006 or Dante.J.Luongo@water.oregon.gov.

Protests

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

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

- The person's name, address, and telephone number;
- All reasonably ascertainable issues and all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue may preclude consideration of the issue during the hearing;
- If you are the applicant, a protest fee of \$720 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$1425 required by ORS 536.050 and proof of service of the protest upon the applicant.

Requests for Standing

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

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

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

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

- Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties stipulate otherwise; and

- If a protest has asserted that a water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

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

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

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

Notice Regarding Servicemembers: Active duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 1-800-452-8260, the Oregon Military Department at 971-355-4420, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.

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

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

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



Oregon

Tina Kotek, Governor

Water Resources Department

North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301
Phone 503 986-0900
Fax 503 986-0904
www.oregon.gov/owrd

September 5, 2025

VIA CERTIFIED MAIL AND E-MAIL

OREGON BERRY PACKING, INC.
C/O JEFF MALENSKY
PO BOX 1326
HILLSBORO, OR 97123

SUBJECT: Water Right Transfer Application T-13778

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13778. 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.

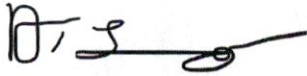
A public notice is being published in the Department's weekly publication and in the Hillsboro Argus newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please don't hesitate to contact me at 971 304-5006 or Dante.J.Luongo@water.oregon.gov, if I may be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Luongo', with a long horizontal stroke extending to the right.

Dante Luongo
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-13778
Jacob W. Constans, District 18 Watermaster (*via e-mail*)
Eric Urstadt, Agent for the applicant (*via e-mail*)
Adam Frederick, District Transfer Program Advisor (*via e-mail*)