

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-10474, Clackamas County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF DIVERSION

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.

Applicant

David A. and Mary A. Bugni
30265 SE Kowall Rd
Estacada, OR 97023

Findings of Fact

Background

1. On October 18, 2007 David Bugni filed an application to change the point of diversion under Certificate 83500. The Department assigned the application number T-10474. On February 5, 2008 the application was amended to include Mary A. Bugni.

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

Certificate: 83500 in the name of David A. and Mary A. Bugni (perfected under Permit 51200)

Use: FISH REARING

Priority Date: JANUARY 30, 1991

Rate: 1.0 CUBIC FOOT PER SECOND

Source: SUTER CREEK, tributary to NORTH FORK EAGLE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
3 S	5 E	WM	18	SW SW	4	290 FEET NORTH AND 150 FEET WEST FROM THE SE CORNER OF THE SW SW of SECTION 18

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.

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot
3 S	5 E	WM	18	SW SW	4

3. Application T-10474 proposes to move the authorized point of diversion approximately 500 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 S	5 E	WM	18	SE SW	315 FEET NORTH AND 185 FEET EAST FROM THE SE CORNER OF THE SW ¼, SW ¼ OF SECTION 18

4. Notice of the application for transfer was published on October 30, 2007 pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
5. On January 16, 2008 the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10474 to the applicant. The draft Preliminary Determination set forth a deadline of February 18, 2008 for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination, provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer and amended the application to include Mary A. Bugni as an applicant.
6. The Oregon Department of Fish and Wildlife (ODFW) has determined that fish screening is necessary at the new point of diversion to prevent fish from entering the diversion diverted and that the existing diversion is currently equipped with an appropriate fish screening device.
7. As a condition of Certificate 83500, ODFW determined the water user should be required to install and maintain boulder placement to dissipate energy from the discharge of the hatchery waste water into Sutter Creek to prevent bank erosion.

Transfer Review Criteria [OAR 690-380-4010(2)]

8. 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.
9. Equipment, tanks, and other structures for use of the water under the existing right were present within the five-year period prior to submittal of Application T-10474.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

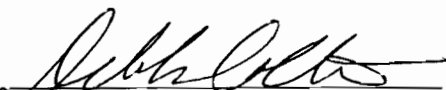
Determination and Proposed Action

The change in point of diversion proposed in application T-10474 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

If application T-10474 is approved, the final order will include the following:

- 1. The change in the point of diversion proposed in application T-10474 is approved.*
- 2. Water Right Certificate 83500 is cancelled.*
- 3. 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 83500 and any related decree.*
- 4. The former point of diversion shall no longer be used under the right.*
- 5. The water user shall maintain and operate a fish screening device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.*
- 6. The water user shall install and maintain boulder placement as required by the Oregon Department of Fish and Wildlife to dissipate energy from the discharge of the hatchery waste water into Sutter Creek to prevent bank erosion.*
- 7. Prior to diverting water, the water user shall install, maintain and operate an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.*
- 8. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2009. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.*
- 9. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 11th day of February 2008.


Phillip C. Ward, Director

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Dorothy Pedersen at 503-986-0890 or Dorothy.I.Pedersen@wrд.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.