



WaterWatch of Oregon Protecting Natural Flows in Oregon Rivers

Supplemental Testimony of WaterWatch of Oregon on Senate Bill 85 Senate Committee on Natural Resources

March 21, 2023

Chair Golden, Vice Chair Girod and members of the Committee:

WaterWatch of Oregon is a non-profit river conservation organization founded in 1985. WaterWatch works to ensure that enough water is protected in Oregon's rivers, lakes and streams to sustain fish, wildlife, recreation and other public uses. We also advocate for balanced water laws and policies, including wise management of Oregon's groundwater resources.

**WaterWatch continues to support Senate Bill 85 with the proposed -1 amendments.
WaterWatch opposes the proposed -3 amendments.**

With the -1 amendments, SB 85 would put a moratorium on new and expanded confined animal feeding operations (CAFOs) above the size currently specified in Oregon Department of Agriculture (ODA) rules as "Large Tier II" CAFOs (e.g., 2,500 dairy cows, 3,500 beef cows, 350,000 broiler chickens) until June 30, 2031. As explained in WaterWatch's written testimony for the March 6 hearing, WaterWatch supports SB 85-1 because, in addition to other harmful impacts, large CAFOs put extreme, concentrated demands on Oregon's rivers, streams, lakes, and groundwater aquifers.

The proposed -3 amendments would limit the moratorium to just large poultry CAFOs and end it after just two years. That moratorium would be too short. It also would be too limited because there is no good reason to limit the moratorium to just large poultry CAFOs. Other large CAFOs are just as impactful, if not more so, to all of the interests threatened by large factory farms.

On water demands alone, for example, a threshold-sized (350,000 birds) Large Tier II broiler chicken (dry waste) CAFO consumes about 19,000 gallons of water per day on average as drinking water for the birds.¹ A threshold-sized (2,500 cows) Large Tier II dairy CAFO consumes about 50,000 gallons of water per day just for drinking water for the cows² - more than twice as much as the chicken CAFO. A large dairy CAFO also requires significant water to

¹ Estimate based on data provided by ODA in poultry CAFO workgroup (Attachment 1) using average consumption in middle of age range.

² Estimate based on [OSU data](#) using average consumption.

irrigate adjacent cropland to absorb nitrates in the animal waste, whereas a typical large chicken CAFO does not.

The controversial J-S Ranch chicken CAFO near Scio involves water rights of less than 1 million gallons per day.³ The proposed Easterday Dairy CAFO near Boardman involves water rights of more than 20 million gallons per day.⁴

Thus, for the sake of our water resources, among other reasons, Oregon needs a moratorium until 2031 on *all* new and expanded large CAFOs, not just a two-year moratorium limited to large poultry CAFOs.

Thank you for considering our comments.

Brian Posewitz

Staff Attorney

Contacts: Brian Posewitz, brian@waterwatch.org.

Jack Dempsey, jack@dempseypublicaffairs.com

³ Attachment 2 (proposed determination on J-S Ranch water-right transfer). Go [here](#) to convert cubic feet per second (cfs) to million gallons per day.

⁴ Attachment 1 is a water supply plan submitted by Easterday Dairy to the Oregon Water Resources Department and obtained pursuant to a public records request. The last row (estimated irrigation demand) is in “acre feet” per year. An acre foot is the amount of water necessary to cover one acre with water one foot deep. To convert acre feet per year to million gallons per day, divide by 1,121 (click [here](#) for a conversion calculator).

Gallons/1000 Birds

Age (Days)	Minimum Usage	Maximum Usage	Average Usage	Age (Days)	Minimum Usage	Maximum Usage	Average Usage	Age (Days)	Minimum Usage	Maximum Usage	Average Usage
1	0	0	0	19	34.75	51.78	43.07	37	55.57	87.49	74.35
2	3.8	7.99	5.35	20	37.22	54.59	44.08	38	56.54	92.33	77.16
3	5.59	11.27	7.7	21	38.7	56.07	46.19	39	61.99	91.8	78.59
4	9.39	14.17	10.98	22	35.57	54.71	47.23	40	67.15	95.99	78.92
5	10.7	16.55	12.84	23	39.07	59.43	49.83	41	65.14	99.26	80.83
6	11.9	16.95	10.04	24	37.96	62.89	53.28	42	66.24	96.43	82.32
7	13.34	19.35	15.96	25	43.26	65.58	54.58	43	59.97	92.61	81.01
8	14.46	21.65	17.59	26	42.29	64.76	54.34	44	65.63	90.7	80.19
9	12.55	23.17	19.51	27	46.33	69.41	57.56	45	69.37	91.83	81.18
10	19.39	29.15	22.54	28	49.05	71.73	59.96	46	66.19	97.96	83.39
11	19.38	30.08	25.71	29	53.33	75.52	63.08	47	69.05	91.2	81.75
12	23.01	31.4	27.83	30	52.94	76.83	63.08	48	71.72	97	82.26
13	26.04	36.33	30.19	31	47.83	79.29	65.66	49	67.22	97.7	85.9
14	28.39	37.94	32.78	32	56.15	78.76	68.29	50	72.72	93.16	85.41
15	29.92	40.64	34.78	33	59.55	84.47	70.1	51	77.05	99.95	85.29
16	29.71	40.64	35.71	34	55.33	88.12	70.22	52	74.86	98.08	86.69
17	30.66	46.14	38.94	35	59.12	85.49	72.59	53	76.68	98.19	87.82
18	32.51	49.07	41.36	36	56.15	87.38	73.21	54	76.45	98.83	87.5



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

November 16 2022

VIA CERTIFIED MAIL AND E-MAIL

Applicant

J-S RANCH INC.

34905 RANCH DRIVE

BROWNSVILLE, OR 97327

SUBJECT: Water Right Transfer Application T-13675

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13675. 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 Albany Democrat Herald 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 contact me at scott.a.grew@water.oregon.gov or 503-986-0890 if I may be of assistance.

Sincerely,

Scott Grew

Transfer Specialist

cc: Transfer Application file T-13675
Gregory J. Wacker, District 16 Watermaster (via e-mail)
William E. McGill, Agent for the applicant (via e-mail)
Mike McCord, Northwest Region Manager (via e-mail)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13675, Linn County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF APPROPRIATION,
)	CHANGE OF PLACE OF USE, AND CHANGE
)	IN CHARACTER OF USE

Authority

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

Applicant

J-S RANCH INC.
34905 RANCH DRIVE
BROWNSVILLE, OR 97327

Findings of Fact

1. On April 15, 2021, J-S RANCH INC. filed an application for an additional point of appropriation, a change of place of use, and a change in character of use under Certificate 76538. The Department assigned the application number T-13675.
2. Notice of the application for transfer was published on April 27, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 24, 2021, the agent for the applicant provided revisions to tables 1 and 2 of the application and a revised map.
4. On June 27, 2022, the agent for the applicant provided revised maps and table 1.
5. On July 11, 2022, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13675 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 10, 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.

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.
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6. On July 12, 2022, the agent for the applicant requested the completion date of October 1, 2027 to allow time to get all the needed permits from governmental agencies involved and develop the proposed facilities before putting the water right to beneficial use. The Department granted the longer time for completion per OAR 690-380-5140 (3).
7. On November 4, 2022, the Department sent a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-13675 13675to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 4, 2022, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.
8. The right to be transferred is as follows:

Certificate: 76538 in the name of TRACY E. MOUNT (perfected under Permit G-12074)
Use: IRRIGATION of 45.7 ACRES
Priority Date: SEPTEMBER 28, 1993
Rate: 0.57 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, is 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: A WELL in the NORTH SANTIAM RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
10 S	2 W	WM	10	NE SW	3	WELL 1 - 1040 FEET SOUTH AND 560 FEET EAST FROM THE INTERIOR OF ELL CORNER OF STEWART DLC 54

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
10 S	2 W	WM	10	SW NW	2	19.2
10 S	2 W	WM	10	NE SW	3	4.9
10 S	2 W	WM	10	NW SW		21.6
					Total	45.7

9. Transfer Application T-13675 proposes an additional point of appropriation approximately 760 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
10 S	2 W	WM	10	SW NW	2	WELL 2 - 870 FEET SOUTH AND 250 FEET WEST FROM THE INTERIOR ELL CORNER OF STEWART DLC 54

10. Transfer Application T-13675 also proposes to change the place of use of the right to:

IRRIGATION (0.33 CFS)						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
10 S	2 W	WM	10	SW NW	2	10.0
10 S	2 W	WM	10	NE SW	3	4.8
10 S	2 W	WM	10	NW SW		10.7
10 S	2 W	WM	10	SW SW		1.0
/					Total	26.5

AGRICULTURE AND STOCK (0.24 CFS)					
Twp	Rng	Mer	Sec	Q-Q	GLot
10 S	2 W	WM	10	SW NW	2
10 S	2 W	WM	10	NW SW	

11. Transfer Application T-13675 proposes to change the character of use of 0.24 CFS to AGRICULTURE AND STOCK USES. 0.24 cfs is the equivalent of 19.2 acres (0.24 cfs ÷ 0.0125 cfs per acre).
12. Certificate 76538 does not specify the irrigation season. However, consistent with the North Santiam River decree, the irrigation season is established as being May 1 through September 30.

Transfer Review Criteria (OAR 690-380-4010)

13. Water has been used according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
14. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-13675.
15. The proposed changes would not result in enlargement of the right, if conditioned so that the rate of diversion for the proposed agricultural and stock use shall be limited to 0.24 cubic foot per second and shall be further limited to a total volume diverted of 48.0 acre-feet (19.2 acres x 2.5 acre-feet per acre) during the time period of May 1 through September 30.
16. The proposed changes would not result in injury to other water rights.
17. All other application requirements are met.

Determination and Proposed Action

The additional point of appropriation, change of place of use and change in character of use proposed in Transfer Application T-13675 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

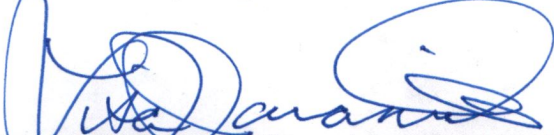
If Transfer Application T-13675 is approved, the final order will include the following:

- 1. The additional point of appropriation, change of place of use and change in character of use proposed in Transfer Application T-13675 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 Certificate 76538 and any related decree.*
- 3. Water right Certificate 76538 is cancelled.*
- 4. The rate of diversion for the proposed agriculture and stock use shall be limited to 0.24 cubic foot per second and shall be further limited to a total volume diverted of 48.0 acre-feet during the time period May 1 through September 30.*
- 5. The quantity of water diverted at the proposed additional point of appropriation (Well 2), together with that diverted at the original point of appropriation (Well 1), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 1).*
- 6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
- 7. The former place of use of the transferred right shall no longer receive water under the right.*
- 8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2027**. 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.*

9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

NOV 16 2022

Dated in Salem, Oregon on



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Scott Grew. If you have questions about the information in this document, you may reach him at scott.a.grew@water.oregon.gov or 503-986-0890.

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

Notice Regarding Service Members: Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, 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.

Water Description Use
Easterday Farms Dairy

single use
time turn
part to
CAFD / 9/15/20

Description	Average Daily Gallons	Mean over year Average Daily CFS	Annual Acre Feet	Source	Approval/Contract Required
Domestic Use for human consumption and sanitation - both employees and owners/operators	4850	0.0075	5.43	1) Port of Morrow 2) Ground Water/Surface Water use transfer <i>Bosma + Mecklinke</i>	1) Current LOI & future contract POM 2) ODWR Transfer Approval
Watering Livestock	336,400	0.5205	376.64	1) Port of Morrow 2) Ground Water/Surface Water use transfer	1) Current LOI & future contract POM 2) ODWR Transfer Approval
Water for the milking system, cleanup, and maintenance	46,500	0.0719	52.06	1) Port of Morrow 2) Ground Water/Surface Water use transfer	1) Current LOI & future contract POM 2) ODWR Transfer Approval
Water for air misting	35,000	0.0541	39.19	1) Port of Morrow 2) Ground Water/Surface Water use transfer	1) Current LOI & future contract POM 2) ODWR Transfer Approval
Other Water use for milk/dairy production	40,000	0.0618	44.79	1) Port of Morrow 2) Ground Water/Surface Water use transfer	1) Current LOI & future contract POM 2) ODWR Transfer Approval
Water used in flushing system for cleaning livestock holding areas	360,000	0.557	403.07	1) Port of Morrow 2) Ground Water/Surface Water use transfer	1) Current LOI & future contract POM 2) ODWR Transfer Approval
Totals	822,750	1.2728	921.18		
Water for dilution of wastewater for application at agronomic rates	N/A	<i>apply to ground water from crop or overfertilizer crops</i>			
Crop Production 5333 Acres		84.96	23998	CID	Certificates 80062, 83517, 86856, 86857, 86992, 86993

8/12/2017

part of mean - 1,020 AP annually