

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING OF AN
T-13276, Umatilla County)	ADDITIONAL POINT OF APPROPRIATION,
)	PLACE OF USE CHANGES, AND PARTIAL
)	DIMINUTION OF WATER RIGHTS

Authority

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

Applicant

BROKEN SPUR RANCH LLC
30522 OLDFIELD ST
HERMISTON, OR 97838

Findings of Fact

1. On October 21, 2019, BROKEN SPUR RANCH LLC filed an application for additional points of appropriation under Certificates 53743, 82164, and 86784, to change the places of use under Certificates 2545, 53122, 53743, 82164, and 86784, and partial diminution of Certificates 53743, 82164, and 86784. The Department assigned the application number T-13276.
2. Notice of the application for transfer was published on October 29, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 3, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13276 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of June 3, 2022, for the applicants to respond. The applicants 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.

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 August 3, 2022, the Department issued a Preliminary Determination proposing to approve Transfer T-13276 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 August 9, 2022, and in the East Oregonian newspaper on August 6, and 13, 2022, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

Certificate: 2545 in the name of A.C. HENDERSON & SONS (confirmed by Umatilla River Decree Vol. 3 at Page 127)

Use: IRRIGATION of 95.6 ACRES

Priority Date: 1891

Rate: 1.2 CUBIC FEET PER SECOND SUBJECT TO THE PROVISIONS OF PARAGRAPH 33 OF SAID DECREE

Source: EAST BIRCH CREEK, tributary of the UMATILLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Measured Distances
1 S	32 E	WM	28	PRIVATE DITCH

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW NW	4.0
1 S	32 E	WM	28	SW NW	20.6
1 S	32 E	WM	28	SE NW	4.5
1 S	32 E	WM	28	NE SW	11.5
1 S	32 E	WM	28	NW SW	8.5
1 S	32 E	WM	28	SW SW	10.5
1 S	32 E	WM	28	SE SW	3.0
1 S	32 E	WM	33	NE NW	22.0
1 S	32 E	WM	33	NW NW	2.0
1 S	32 E	WM	33	SE NW	9.0
Total:					95.6

6. Certificate 2545 does not describe the duty and rate limit per acre; however, information is available from the Umatilla River Decree indicating that the duty allowed for the right is one-eightieth of one cubic foot per second per acre and the duty limit as 4.5 acre-feet per acre consistent with paragraph 33 of the Umatilla River Decree and all other conditions and limitations contained in said decree.

7. Certificate 2545 states, East Birch Creek is a tributary of the Umatilla River, however, East Birch Creek is a tributary to Birch Creek, and both Creeks are tributaries of the Umatilla River.

8. Water right Certificate 2545 does not provide a detailed description of the point of diversion, however information is available from the applicant describing the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	32 E	WM	33	SE NW	PUMPING PLANT - 1345 FEET SOUTH AND 830 FEET WEST FROM THE N 1/4 CORNER OF SECTION 33

9. Transfer Application T-13276 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW NW	5.6
1 S	32 E	WM	28	SW NW	17.9
1 S	32 E	WM	28	SE NW	6.0
1 S	32 E	WM	28	NE SW	8.6
1 S	32 E	WM	28	NW SW	16.2
1 S	32 E	WM	28	SW SW	8.8
1 S	32 E	WM	28	SE SW	5.9
1 S	32 E	WM	28	NE NW	19.8
1 S	32 E	WM	33	NW NW	3.0
1 S	32 E	WM	33	SE NW	3.8
Total:					95.6

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

Certificate: 53122 in the name of JOHN P MCMANUS, PRESIDENT, APPLEBURG WATER COMPANY (confirmed by Umatilla River Decree Vol. 3, Page 127)

Use: IRRIGATION of 21.5 ACRES

Priority Date: MAY 31, 1909

Rate: 0.27 CUBIC FEET PER SECOND SUBJECT TO THE CONDITIONS OF PARAGRAPH 33 OF SAID DECREE

Source: EAST BIRCH CREEK tributary of UMATILLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Measured Distances
1 S	32 E	WM	28	Not Described

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NE NW	4.2
1 S	32 E	WM	28	NW NW	15.8
1 S	32 E	WM	28	SE NW	1.5
Total:					21.5

11. Certificate 53122 does not describe the duty and rate limit per acre; however, information is available from the Umatilla River Decree indicating that the duty allowed for the right is one-eightieth of one cubic foot per second per acre and the duty limit as 4.5 acre-feet per acre consistent with paragraph 33 of the Umatilla River Decree and all other conditions and limitations contained in said decree.

12. Transfer Application T-13276 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NE NW	3.7
1 S	32 E	WM	28	NW NW	16.2
1 S	32 E	WM	28	SW NW	1.6
Total:					21.5

13. The third right to be transferred is as follows:

Certificate: 53743 in the name of DIXIE CUMISKEY (perfected under Permit G-6788)
Use: IRRIGATION OF 16.1 ACRES and SUPPLEMENTAL IRRIGATION of 6.8 ACRES
Priority Date: JUNE 2, 1976
Rate: 0.29 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 3.0 acre-feet for each acre irrigated during the irrigation season of each year.
Source: WELL No. 1, a tributary of EAST BIRCH CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	32 E	WM	21	NE SW	250 FEET SOUTH AND 1020 FEET WEST FROM THE C 1/4 CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	21	NE SW	16.1

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	21	SE SW	6.8

14. Transfer Application T-13276 proposes additional points of appropriation with approximate distances in mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from Well No. 1
1 S	32 E	WM	21	SE SW	WELL 2 - 733 FEET NORTH AND 1429 FEET EAST FROM THE SW CORNER OF SECTION 21	0.34
1 S	32 E	WM	28	SE NW	WELL 1 - 610 FEET NORTH AND 1350 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 28	0.59

15. Transfer Application T-13276 also proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW NW	7.6
1 S	32 E	WM	28	SW NW	6.3
1 S	32 E	WM	28	SE NW	3.9
1 S	32 E	WM	28	NE SW	5.1
Total:					22.9

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

Certificate: 82164 in the name of THOMAS E. RUGG (perfected under Permit G-7968)

Use: PRIMARY IRRIGATION OF 8.1 ACRES AND SUPPLEMENTAL IRRIGATION OF 67.4 ACRES

Priority Date: AUGUST 31, 1977

Rate: 0.94 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 a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

Source: ONE WELL in the UMATILLA BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	32 E	WM	28	SE NW	ONE WELL - 610 FEET NORTH AND 1350 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 28

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW SW	8.0
1 S	32 E	WM	28	SW SW	0.1
Total					8.1

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NE NW	1.3
1 S	32 E	WM	28	NW NW	18.8
1 S	32 E	WM	28	SW NW	20.6

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	SE NW	1.4
1 S	32 E	WM	28	NE SW	9.1
1 S	32 E	WM	28	NW SW	8.2
1 S	32 E	WM	28	SW SW	8.0
Total					67.4

17. Transfer Application T-13276 proposes additional points of appropriation with approximate distances in mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from Well No. 1
1 S	32 E	WM	21	SE SW	WELL 2 – 733 FEET NORTH AND 1429 FEET EAST FROM THE SW CORNER OF SECTION 21	0.50
1 S	32 E	WM	21	NE SW	WELL 3 - 250 FEET SOUTH AND 1020 FEET WEST FROM THE CENTER 1/4 CORNER OF SECTION 21	0.80

18. Transfer Application T-13276 also proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW SW	8.0
1 S	32 E	WM	28	SW SW	0.1
1 S	32 E	WM	28	NE NW	2.5
1 S	32 E	WM	28	SW NW	11.9
1 S	32 E	WM	28	NE SW	3.5
1 S	32 E	WM	28	NW SW	8.2
1 S	32 E	WM	28	SW SW	8.8
1 S	32 E	WM	28	SE SW	5.9
1 S	32 E	WM	33	NE NW	19.8
1 S	32 E	WM	33	NW NW	3.0
1 S	32 E	WM	33	SE NW	3.8
Total					75.5

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

Certificate: 86784 in the name of ARTHUR J. FALK AND KAREN L. FALK (perfected under Permit G-5510)

Use: IRRIGATION of 13.94 ACRES

Priority Date: JANUARY 11, 1972

Rate: 0.18 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 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL in the EAST BIRCH CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	32 E	WM	21	SE SW	733 FEET NORTH AND 1429 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	21	SE SW	13.94

20. The original point of appropriation for Certificate 86784 is as described below, per conditions of the certificate water must be available at this point:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	32 E	WM	21	SW SW	1000 FEET NORTH AND 750 FEET EAST FROM THE SW CORNER OF SECTION 21

21. Transfer Application T-13276 proposes additional points of appropriation with approximate distances in mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from Well No. 2
1 S	32 E	WM	21	NE SW	WELL 3 - 250 FEET SOUTH AND 1020 FEET WEST FROM THE CENTER 1/4 CORNER OF SECTION 21	0.30 N
1 S	32 E	WM	28	SE NW	WELL 1 - 610 FEET NORTH AND 1350 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 28	0.50 S

22. Transfer Application T-13276 also proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW NW	13.94

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

23. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
24. A pump, pipeline, and sprinkler system 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-13276.
25. The proposed changes, as conditioned, would not result in enlargement of the rights.
26. The proposed changes would not result in injury to other water rights.
27. All other application requirements are met.

Partial Diminishment of Water Rights

28. On October 21, 2019, affidavits and proof of ownership documents were submitted by Bentio Mendelez Jr., the affidavits propose the diminution of portions of Certificates 53743, 82164, and 86784 from Primary Irrigation to Supplemental Irrigation in accordance with 690-380-5120, as described in the findings below.
29. The portion of the first right to be diminished from primary irrigation to supplemental irrigation is as follows:

Certificate: 53743 in the name of DIXIE CUMISKEY (perfected under Permit G-6788)
Use: IRRIGATION of 16.1 ACRES
Priority Date: JUNE 2, 1976
Rate: 0.20 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, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: WELL No 1. A tributary of EAST BIRCH CREEK

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	32 E	WM	21	NE SW	250 FEET SOUTH AND 1020 FEET WEST FROM THE C1/4 CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW NW	7.6
1 S	32 E	WM	28	SW NW	6.3
1 S	32 E	WM	28	SE NW	2.2
Total:					16.1

30. The portion of the right Certificate 53743 to be diminished to supplemental irrigation is described in the table below:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW NW	7.6
1 S	32 E	WM	28	SW NW	6.3
1 S	32 E	WM	28	SE NW	2.2
Total:					16.1

31. The portion of the second right to be diminished from primary irrigation to supplemental irrigation is as follows:

Certificate: 82164 in the name of THOMAS E. RUGG (perfected under Permit G-7968)

Use: IRRIGATION of 8.1 ACRES

Priority Date: AUGUST 31, 1977

Rate: 0.10 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 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 3.0, acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: ONE WELL in the UMATILLA

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	32 E	WM	28	SE NW	610 FEET NORTH AND 1350 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 28

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW SW	8.00
1 S	32 E	WM	28	SW SW	0.10

32. The portion of Certificate 82164 to be diminished to supplemental irrigation is described in the table below:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW SW	8.00
1 S	32 E	WM	28	SW SW	0.10

33. The portion of the third right to be diminished from primary irrigation to supplemental irrigation is as follows:

Certificate: 86784 in the name of ARTHUR J. AND KAREN L. FALK (perfected under Permit G-5510)

Use: IRRIGATION of 13.94 ACRES

Priority Date: JANUARY 11, 1972

Rate: 0.18 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 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 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL within the EAST BIRCH CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	32 E	WM	21	SE SW	733 FEET NORTH AND 1429 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW NW	13.94

34. The portion of the right Certificate 53743 to be diminished to supplemental irrigation is described in the table below:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW NW	13.94

Conclusions of Law

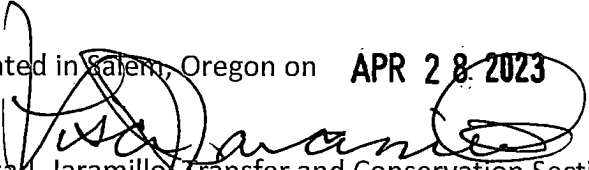
The additional points of diversion and change in places of use proposed in Transfer Application T-13276 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the diminished rights are diminished.

Now, therefore, it is ORDERED:

1. The additional points of diversion and change in places of use proposed in Transfer Application T-13276 are approved. The portion of the rights that have been diminished are diminished to supplemental irrigation.
2. The right to the use of the water is restricted to beneficial use at the places of use described and is subject to all other conditions and limitations contained in Certificates 2545, 53122, 53743, 82164, 86784, orders, and any related decree.
3. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of appropriation.
 - b. The water user shall maintain the meters or measuring devices in good working order.
 - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
4. Water right Certificates 2545, 53122, 53743, 82164, and 86784 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer and diminutions.

5. The portions of Certificates 53743, 82164, and 86784 as described in the findings are diminished to supplemental irrigation.
6. The quantity of water diverted at the additional points of appropriation, together with that diverted at the original points of appropriation shall not exceed the quantity of water lawfully available at the original points of diversion.
7. The former places of use of the transferred rights shall no longer receive water under the rights.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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, new certificates confirming the rights transferred will be issued.

Dated in Salem, Oregon on **APR 28 2023**


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

Mailing date: **MAY 02 2023**