

draft Preliminary Determination cover letter set forth a deadline of January 16, 2019, 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.

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

Certificate: 92007 in the name of Bond Living Trust and Steve Charron Separate Property Trust (confirmed by the John Day River Decree at Volume 12, page 388)
Use: Irrigation of 30.4 Acres
Priority Date: 1865
Rate: 1.02 Cubic Feet per Second (CFS)
Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed ONE-FORTIETH of one cubic foot per second per acre of land irrigated before June 15, and ONE-EIGHTIETH of one cubic foot per second per acre after June 15, during the irrigation season from March 1 to October 1 of each year, measured at the point of diversion.
Source: BRIDGE CREEK, tributary to the JOHN DAY RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	20 E	WM	34	SW SW	700 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 34

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Owner
9 S	20 E	WM	33	SW SE	1.0	Charron
9 S	20 E	WM	33	SW SE	6.0	Bond
9 S	20 E	WM	33	SE SE	19.0	Bond
10 S	20 E	WM	4	NE NE	4.4	Bond
TOTAL					30.4	

7. Transfer Application T-12079 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	20 E	WM	33	SW SE	1.0
9 S	20 E	WM	33	SW SE	6.0
9 S	20 E	WM	33	SE SE	20.0
10 S	20 E	WM	3	NE NE	3.4
TOTAL					30.4

8. The second right to be transferred is as follows:

Certificate: 57511 in the name of Kenneth A. Bond (perfected under Permit S-41215)
Use: Supplemental Irrigation of 30.4 Acres
Priority Date: December 3, 1976
Rate: 0.76 Cubic Foot per Second (CFS)

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-FORTIETH 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 5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: JOHN DAY RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	20 E	WM	34	SW SW	700 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 34

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	20 E	WM	33	SW SE	7.0
9 S	20 E	WM	33	SE SE	19.0
10 S	20 E	WM	4	NE NE	4.4
TOTAL					30.4

9. Transfer Application T-12079 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	20 E	WM	33	SW SE	7.0
9 S	20 E	WM	33	SE SE	20.0
10 S	20 E	WM	4	NE NE	3.4
TOTAL					30.4

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

Certificate: 79986 in the name of NELDA L. EVANS (confirmed by the Bridge Creek Decree at Volume 12, Page 388 and by the John Day River decree at Volume 15, Page 461)

Use: IRRIGATION of 40.9 ACRES

Priority Date: 1865

Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed ONE-FORTIETH of one cubic foot per second per acre of land irrigated before June 15, and ONE-EIGHTIETH of one cubic foot per second per acre after June 15, during the irrigation season from March 1 to October 1 of each year, measured at the point of diversion from the stream.

Source: BRIDGE CREEK, tributary to the JOHN DAY RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	20 E	WM	3	NE NE	BRIDGE CREEK - 4485 FEET NORTH AND 960 FEET WEST FROM THE SE CORNER OF SECTION 3

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	20 E	WM	34	SW SW	15.0
9 S	20 E	WM	34	SE SW	7.5
9 S	20 E	WM	34	SW SE	5.5
10 S	20 E	WM	3	NE NE	7.0
10 S	20 E	WM	3	NW NE	3.9
10 S	20 E	WM	3	NW NW	2.0
TOTAL					40.9

11. Transfer Application T-12079 proposes to move the authorized point of diversion approximately 0.9 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	20 E	WM	34	SW SW	JOHN DAY RIVER - 700 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 34

12. Transfer Application T-12079 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	20 E	WM	34	SW SW	16.5
9 S	20 E	WM	34	SE SW	6.9
9 S	20 E	WM	34	SW SE	7.8
10 S	20 E	WM	3	NE NE	3.3
10 S	20 E	WM	3	NW NE	5.0
10 S	20 E	WM	3	NW NW	1.4
TOTAL					40.9

13. 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 690-380-4010(2)]

14. 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.
15. A diversion structure and ditch 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-12079.
16. The proposed changes as conditioned would not result in enlargement of the rights.
17. The proposed changes as conditioned would not result in injury to other water rights.

Determination and Proposed Action

The change in point of diversion and change in place of use proposed in Transfer Application T-12079 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.

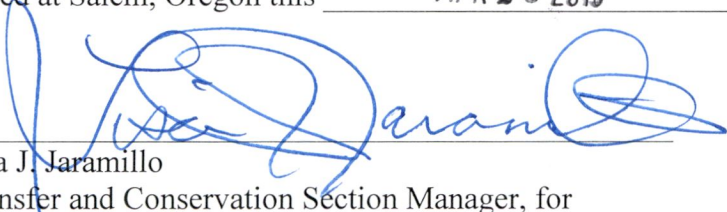
If Transfer Application T-12079 is approved, the final order will include the following:

1. *The change in point of diversion and changes in place of use proposed in Transfer Application T-12079 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 79986, 92007 and 57511 and any related decree.*
3. *Water right Certificates 92007, 79986, and 57511 are cancelled.*
4. *The quantity of water diverted at the new point of diversion (John Day River), shall not exceed the quantity of water lawfully available at the original point of diversion (Bridge Creek).*
5. *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 new point of diversion.*
 - b. *The water user shall maintain the meter or measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring device(s); provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice*
6. *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
7. *The former place of use of the transferred rights shall no longer receive water under the rights. In order for the full rate to be allocated under these rights and on the properties as described, the flow measured at Bridge Creek Gage 14046778 must exceed 1.78 cubic foot per second between March 1 and June 14 and between 0.88 cubic foot per second between June 15 and October 1.*

8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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 at Salem, Oregon this APR 26 2019.



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

This Preliminary Determination was prepared by Tamera Smith. If you have any questions, please contact me at 503-986-0864 or tamera.l.smith@oregon.gov

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 service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>



Oregon

Kate Brown, Governor

Water Resources Department

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April 26, 2019

VIA E-MAIL

WHEELER COUNTY SWCD
PO BOX 431
FOSSIL, OR 97830

SUBJECT: Water Right Transfer Application T-12079

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12079. 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 Central Oregonian, 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 503-986-0898 or tamera.l.smith@oregon.gov if I may be of assistance.

Kindest regards,

Tamera Smith
Transfer Specialist
Transfer and Conservation Section

cc: T-12079
Kenneth C. Thiemann, District 21 Watermaster (*via e-mail*)
Hayes McCoy, Agent for the applicant (*via e-mail*)

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