

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

In the Matter of Transfer Application     )  
T-13304, Wasco County                     ) PRELIMINARY DETERMINATION  
   ) PROPOSING APPROVAL OF CHANGES  
   ) IN PLACE OF USE AND ADDITIONAL  
   ) POINTS OF DIVERSION

**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**

KW RANCH, LLC.  
c/o GUY R. AND JO L. HARVEY  
84033 HWY 216  
TYGH VALLEY, OR 97063

**Findings of Fact**

1. On December 9, 2019, Guy and Jo Harvey filed an application to change the place of use and for an additional point of diversion under Certificates 3317 and 3733, and for an additional point of diversion under Certificates 24525 and 52578. The Department assigned the application number T-13304.
2. Notice of the application for transfer was published on December 17, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 4, 2020, the agent for the applicant submitted a revised application and maps to clarify the place of use.
4. July 20, 2020, the agent for the applicant submitted an affidavit by the landowner adjacent to the applicant consenting to the transfer of 8.0 acres proposed under Certificate 3733 in this transfer. The affidavit also contains a statement indicating that this adjacent landowner does not intend on proving up on the 8.0 acres of a supplemental irrigation water right Permit G-17353 on these same lands and is further described below in Finding #9.

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.

5. On July 31, 2020, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13304 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 30, 2020, for the applicant to respond. On August 26, 2020, the agent for the applicant requested the Department continue with the transfer, proceed with issuance of the Preliminary Determination, and provided information to demonstrate the applicant is qualified to pursue the transfer. Additionally, on October 7, 2020, the agent for the applicant requested additional time for completion of the transfer to be extended to October 1, 2025, to guarantee adequate time to complete the project. The Department approved and extended the date by which the applicant must make full beneficial use of water under the terms and conditions of this transfer to October 1, 2025.
6. On October 1, 2020, the Department approved an assignment of transfer application T-13304 to KW Ranch, LLC., still owned and operated by Mr. Guy Harvey. The assignment was recorded in the records of the Water Resources Department in Salem.
7. The first right to be transferred is as follows:

**Certificate:** 3317 in the name of TYGH VALLEY HIGH LINE DITCH CO., c/o C.A. Harth (perfected under Permit S-220)  
**Use:** IRRIGATION of 341.0 ACRES  
**Priority Date:** AUGUST 19, 1909  
**Rate:** 4.26 CUBIC FEET PER SECOND, or its equivalent in case of rotation  
**Source:** BADGER and TYGH CREEKS, a tributary of WHITE RIVER

**Authorized Place of Use:**

IRRIGATION						Acreage per Change	
Twp	Rng	Mer	Sec	Q - Q	Proposed Changes	▲ Addt'l POD	▲ POU
4 S	13 E	WM	1	SW NE	Addt'l POD only	14.0	--
4 S	13 E	WM	1	SW NW	Addt'l POD only	28.0	--
4 S	13 E	WM	1	SE NW	Addt'l POD only	26.0	--
4 S	13 E	WM	1	NW SW	Addt'l POD only	36.0	--
4 S	13 E	WM	1	SW SW	Addt'l POD only	9.0	--
4 S	13 E	WM	1	NE SE	Addt'l POD only	30.0	--
4 S	13 E	WM	1	NW SE	Addt'l POD only	30.0	--
4 S	13 E	WM	1	SW SE	Addt'l POD only	25.0	--
4 S	13 E	WM	1	SE SE	Addt'l POD only	25.0	--
4 S	13 E	WM	2	SW NE	APOD and POU	2.0	0.9
4 S	13 E	WM	2	SE NE	Addt'l POD only	10.0	--
4 S	13 E	WM	2	SE NW	APOD and POU	7.0	3.6
4 S	13 E	WM	2	NE SW	Addt'l POD only	33.0	--
4 S	13 E	WM	2	NE SE	Addt'l POD only	3.0	--
4 S	13 E	WM	2	NW SE	Addt'l POD only	3.0	--
4 S	14 E	WM	6	SW NW	Addt'l POD only	10.0	--
4 S	14 E	WM	6	NE SW	Addt'l POD only	15.0	--
4 S	14 E	WM	6	NW SW	Addt'l POD only	15.0	--
4 S	14 E	WM	6	SW SW	Addt'l POD only	5.0	--
4 S	14 E	WM	6	SE SW	Addt'l POD only	15.0	--
Total:						341.0	4.5

8. Certificate 3317 does not describe the location of the points of diversion, however, based on the Department's permit map and the current map prepared by the applicant's Certified Water Rights Examiner based on a recent field visit and subsequent survey indicates that two points of diversion on Badger Creek and Tygh Creek are located as follows:

Twp	Rng	Mer	Sec	Q - Q	Ditch
3 S	13 E	WM	32	SE SW	TYGH CREEK - 1185 FEET NORTH AND 1400 FEET EAST FROM THE SW CORNER OF SECTION 32
4 S	13 E	WM	6	NE NE	BADGER CREEK - 1020 FEET SOUTH AND 45 FEET EAST FROM THE NE CORNER OF SECTION 6

9. Transfer Application T-13304 proposes an additional point of diversion downstream approximately 5.0 miles on Tygh Creek and further downstream approximately 1.5 miles on White River to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 S	13 E	WM	12	NW NE	NEW POD - 1430 FEET NORTH AND 930 EAST FROM THE CENTER OF SECTION 12

10. Transfer Application T-13304 also proposes to change the place of use of the above described 4.5 acres to the following locations:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	13 E	WM	2	SW NE	0.8
4 S	13 E	WM	2	NW SE	3.7
Total:					4.5

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

**Certificate:** 3733 in the name of GEORGE J. BURLINGAME (perfected under Permit S-4069)

**Use:** IRRIGATION of 8.0 ACRES

**Priority Date:** MAY 2, 1919

**Rate:** 0.10 CUBIC FOOT PER SECOND

**Source:** BADGER and TYGH CREEK, a tributary of WHITE RIVER

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	13 E	WM	3	NW NE	8.0

\*Note: there exists a layered supplemental water right, being Permit G-17353, on these lands that will not be transferred and additionally will not be proved up on.

12. Certificate 3733 does not describe the location of the points of diversion, however, based on the Department's permit map and the current map prepared by the applicant's Certified Water Rights Examiner, and based on a recent field visit and subsequent survey indicates that two points of diversion on Badger Creek and Tygh Creek are located as follows:

Twp	Rng	Mer	Sec	Q - Q	Ditch
3 S	13 E	WM	32	SE SW	TYGH CREEK - 1185 FEET NORTH AND 1400 FEET EAST FROM THE SW CORNER OF SECTION 32
4 S	13 E	WM	6	NE NE	BADGER CREEK - 1020 FEET SOUTH AND 45 FEET EAST FROM THE NE CORNER OF SECTION 6

13. Transfer Application T-13304 proposes an additional point of diversion downstream approximately 5.0 miles on Tygh Creek and further downstream approximately 1.5 miles on White River to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 S	13 E	WM	12	NW NE	NEW POD - 1430 FEET NORTH AND 930 EAST FROM THE CENTER OF SECTION 12

14. Transfer Application T-13304 proposes to change the place of use of the above right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	13 E	WM	2	SW NE	8.0

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

**Certificate:** 24525 in the name of TYGH VALLEY HIGHLINE DITCH COMPANY (perfected under Permit S-19086)

**Use:** IRRIGATION of 67.4 ACRES

**Priority Date:** OCTOBER 24, 1949

**Rate:** 1.30 CUBIC FEET PER SECOND, water to be diverted from Tygh Creek when available, any deficiency in the available supply from Tygh Creek to be made up by diversion from Badger Creek providing the total diversion does not exceed 1.30 cubic feet per second from both streams.

**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-FORTIETH 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 acre-feet per acre for each acre irrigated during the irrigation season of each year, provided further that the total diversion from both sources shall not exceed the quantity allowed herein.

**Source:** BADGER and TYGH CREEKS, a tributary of WHITE RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Source
3 S	13 E	WM	32	SE SW	TYGH CREEK
4 S	13 E	WM	6	NE NE	BADGER CREEK

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	13 E	WM	1	NW NE	11.6
4 S	13 E	WM	1	SW NE	17.0
4 S	13 E	WM	1	NE NW	6.0
4 S	13 E	WM	1	SE NW	6.0
4 S	13 E	WM	1	NE SW	18.0
4 S	13 E	WM	1	SE SW	8.8
Total:					67.4

16. Transfer Application T-13304 proposes an additional point of diversion downstream approximately 5.0 miles on Tygh Creek and further downstream approximately 1.5 miles on White River to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 S	13 E	WM	12	NW NE	NEW POD - 1430 FEET NORTH AND 930 EAST FROM THE CENTER OF SECTION 12

17. The fourth right to be transferred is as follows:

**Certificate:** 52578 in the name of RICK HARVEY (confirmed by decree of the Circuit Court of the State of Oregon for Wasco County River decree)  
**Use:** IRRIGATION of 114.5 (Tract 1) and 77.5 ACRES (Tract 2)  
**Priority Date:** 1877 for Tract 1 and 1866 for Tract 2  
**Limit/Duty:** The amount of water to which such right is entitled, for the purpose of irrigation, is limited to an amount actually beneficially used for said purposes, and shall not exceed 3.0 acre-feet per acre during the irrigation season (with the further limitations contained in paragraph 24 of said decree); if available at the original point of diversion; NE $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 3, T4S, R13E, WM; 910 feet South and 1010 feet West from the Center of Section 3 (Bonney Ditch)  
**Source:** TYGH CREEK, a tributary of WHITE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 S	13 E	WM	11	NW NE	TYGH CREEK - 20 FEET SOUTH AND 1940 EAST FROM THE NW CORNER OF THE NE $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 11

**Authorized Place of Use:**

IRRIGATION - TRACT 1 (1877)					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	13 E	WM	1	SW SW	2.1
4 S	13 E	WM	2	NE SW	10.4
4 S	13 E	WM	2	SE SW	38.6
4 S	13 E	WM	2	NE SE	19.3
4 S	13 E	WM	2	NW SE	28.9
4 S	13 E	WM	2	SW SE	7.4
4 S	13 E	WM	2	SE SE	7.8
Total:					114.5

IRRIGATION – TRACT 2 (1866)					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	13 E	WM	1	SW SW	17.3
4 S	13 E	WM	2	SW SE	32.2
4 S	13 E	WM	2	SE SE	28.0
Total:					77.5

18. Transfer Application T-13304 proposes an additional point of diversion for the above described right downstream approximately 5.0 miles on Tygh Creek and further downstream approximately 1.5 miles on White River to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 S	13 E	WM	12	NW NE	NEW POD - 1430 FEET NORTH AND 930 EAST FROM THE CENTER OF SECTION 12

19. 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)]***

20. Water has been used within the five-year period prior to submittal of the transfer application 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.
21. Diversion structures and ditches 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-13304.
22. The proposed changes would not result in enlargement of the rights.
23. The proposed changes would not result in injury to other water rights.
24. All other application requirements are met.

**Determination and Proposed Action**

The changes in place of use and additional points of diversion proposed in Transfer Application T-13304 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-13304 is approved, the final order will include the following:*

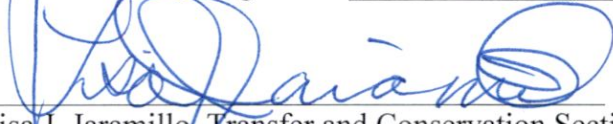
1. *The changes in place of use and additional points of diversion proposed in Transfer Application T-13304 are approved.*

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 3317, 3733, 24525 and 52578 and any related decree.*
3. *Water right Certificates 3317, 3733, 24525 and 52578 are cancelled. New certificates will be issued describing those portions of Certificates 3733, 24525, and 52578 not affected by this transfer.*
4. *The combined quantity of water, as authorized under Certificates 3317, 3733, and 24525, diverted at the new additional point of diversion (New POD), together with that diverted at the original points of diversion (Badger and Tygh Creeks), shall not exceed the quantity of water lawfully available at the original points of diversion (Badger and Tygh Creeks).*
5. *The quantity of water, as authorized under Certificate 52578, diverted at the new additional point of diversion (New POD), shall not exceed the quantity of water lawfully available at the original point of diversion (Tygh Creek).*
6. *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; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
7. *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.*
8. *The former places of use of the transferred rights (Certificates 3317 and 3733) shall no longer receive water under the rights.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2025**. 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.*

10. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this JAN 19 2021,

  
Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
THOMAS M BYLER, DIRECTOR  
Oregon Water Resources Department

This Preliminary Determination was prepared by Ken Dowden. T-13304 has been assigned to Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@oregon.gov)

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

**IMPORTANT:** Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

**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

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

January 19, 2021

KW RANCH, LLC.  
c/o GUY R. AND JO L. HARVEY  
84033 HWY 216  
TYGH VALLEY, OR 97063

SUBJECT: Water Right Transfer Application T-13304

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13304. 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 Dalles Chronicle 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.

**IMPORTANT:** Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Please do not hesitate to contact me, at [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@oregon.gov) or (503) 986-0825, if I may be of assistance.

Sincerely,

A handwritten signature in blue ink that reads "Corey Courchane". The signature is fluid and cursive, with the first name "Corey" and last name "Courchane" clearly distinguishable.

Corey Courchane  
Transfer Specialist  
Transfer and Conservation Section

cc: T-13304  
Robert L. Wood, District 3 Watermaster (*via e-mail*)  
Josh Thompson, Agent for the applicant (*via e-mail*)

encs