

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

| | | |
|---------------------------------------|---|------------------------------|
| In the Matter of Transfer Application |) | PRELIMINARY DETERMINATION |
| T-13459, Wallowa County |) | PROPOSING APPROVAL OF A |
| |) | CHANGE IN POINT OF DIVERSION |
| |) | AND PLACES OF USE |

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

ERL MCLAUGHLIN
65708 SUNRISE RD
ENTERPRISE, OR 97828

Findings of Fact

1. On June 5, 2020, ERL MCLAUGHLIN filed an application to change the point of diversion and place of use under Certificate 7716, and to change the place of use under Certificates 9045, 9046, 9311, and 48403. The Department assigned the application number T-13459.
2. Notice of the application for transfer was published on June 16, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 5, 2020, the Department contacted the applicant by written correspondence to notify the applicant of deficiencies in the application. An Evidence of Use Affidavit and supporting documentation was submitted for only Certificate 7716. The application included only one map. Pursuant to OAR 690-380-3100(1)(i), if the proposed transfer involves changes in place of use or character of use for more than three water rights, a separate map shall be provided for each water right. Additionally, Table 2 under Certificates 9045, 9046, and 48403 incorrectly described the places of use being transferred. The Department requested that the deficiencies be resolved by November 5, 2020.
4. On October 19, 2020, the applicant submitted a revised Table 2 for Certificates 9045, 9046, and 48403.

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| 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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5. On October 30, 2020, the Department received Evidence of Use Affidavits and supporting documentation for Certificates 9045, 9046, 9311, and 48403.
6. On November 23, 2020, the Department received a separate map for Certificates 7716, 9311, and 48403, pursuant to OAR 690-380-3100(1)(i).
7. On December 9, 2020, the Department received separate maps for Certificates 9045 and 9046, resolving the deficiencies.
8. On January 21, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13459 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 22, 2021, 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.
9. The portion of the first right to be transferred is as follows:

Certificate: 7716 in the name of BIG BEND WATER DITCH COMPANY (confirmed by WALLOWA RIVER (F))
Use: IRRIGATION of 15.8 ACRES
Priority Date: FEBRUARY 1884
Rate: LIMITED TO AN AMOUNT ACTUALLY BENEFICIALLY USED FOR SAID PURPOSES
Limit/Duty: Shall not exceed 1.5 acre feet per acre during any period of thirty days prior to July 31st of each year, and thereafter not to exceed 1.0 acre foot per acre during the entire remainder of the irrigation season.
Source: WALLOWA RIVER, a tributary of the GRANDE RONDE RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-------------------------------------|-----|-----|-----|-----|--------------------|
| <i>Not specified in certificate</i> | | | | | |

Authorized Place of Use:

| IRRIGATION – TRACT NO. 15 | | | | | |
|---------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 2 S | 45 E | WM | 29 | NE SW | 10.0 |
| 2 S | 45 E | WM | 29 | NW SW | 5.8 |
| Total | | | | | 15.8 |

10. The Department received information from the applicant that better describes the location of the authorized points of diversion for Certificate 7716 as follows:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 2 S | 45 E | WM | 31 | NE NE | BIG BEND DITCH - 550 FEET SOUTH AND 800 FEET WEST FROM THE NE CORNER OF SECTION 31 |
| 3 S | 45 E | WM | 5 | NE NW | DAM - 940 FEET SOUTH AND 1500 FEET EAST FROM THE NW CORNER OF SECTION 5 |

11. Transfer Application T-13459 proposes to move the authorized points of diversion downstream to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances | Approximate distance from original points of diversion in miles (mi.) | |
|-----|------|-----|-----|-------|--|---|---------|
| 2 S | 44 E | WM | 24 | SW NE | LOWER ALDER SLOPE - 1090 FEET NORTH AND 390 FEET WEST FROM THE E1/4 CORNER OF SECTION 24 | BIG BEND DITCH | DAM |
| | | | | | | 2.9 mi. | 4.5 mi. |

12. Transfer Application T-13459 also proposes to change the place of use of the right to:

| IRRIGATION – TRACT 15 | | | | | |
|-----------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 1 S | 44 E | WM | 32 | SE SE | 2.6 |
| 1 S | 44 E | WM | 33 | SW SW | 13.2 |
| Total | | | | | 15.8 |

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

Certificate: 9045 in the name of ALDER SLOPE DITCH COMPANY (perfected under Permit S-6723)
Use: IRRIGATION of 2.8 ACRES
Priority Date: MAY 15, 1924
Rate: 0.04 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 acre, or its equivalent in case of rotation.
Source: HURRICANE CREEK AND NUMEROUS SPRINGS, AND SPRING CREEKS INCLUDING SCOTCH CREEK, BEING ALL WATERS OF ANY NATURE INTERCEPTED BY CANAL, tributary of WALLOWA RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q |
|-----|------|-----|-----|-------|
| 2 S | 44 E | WM | 24 | SW NE |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 2 S | 44 E | WM | 5 | NE NE | 1.3 |
| 2 S | 44 E | WM | 5 | SE NE | 1.5 |
| Total | | | | | 2.8 |

14. The Department received information from the applicant that better describes the location of the authorized points of diversion for Certificate 9045 as follows:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 2 S | 44 E | WM | 24 | SE NE | 1090 FEET NORTH AND 390 FEET WEST FROM THE E1/4 CORNER OF SECTION 24 |

15. Transfer Application T-13459 proposes to change the place of use of the right to:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 1 S | 44 E | WM | 33 | SW SW | 2.8 |

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

Certificate: 9046 in the name of ALDER SLOPE DITCH COMPANY (perfected under Permit S-6724)
Use: SUPPLEMENTAL IRRIGATION of 2.8 ACRES
Priority Date: MARCH 12, 1925
Rate: 0.04 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 acre, or its equivalent in case of rotation.
Source: WALLOWA RIVER, a tributary of GRANDE RONDE RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q |
|-----|------|-----|-----|-------|
| 2 S | 44 E | WM | 24 | SE NE |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 2 S | 44 E | WM | 5 | NE NE | 1.3 |
| 2 S | 44 E | WM | 5 | SE NE | 1.5 |
| Total | | | | | 2.8 |

17. The Department received information from the applicant that better describes the location of the authorized points of diversion for Certificate 9046 as follows:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 2 S | 44 E | WM | 24 | SE NE | 1090 FEET NORTH AND 390 FEET WEST FROM THE E1/4 CORNER OF SECTION 24 |

18. Transfer Application T-13459 proposes to change the place of use of the right to:

| SUPPLEMENTAL IRRIGATION | | | | | |
|-------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 1 S | 44 E | WM | 33 | SW SW | 2.8 |

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

Certificate: 9311 in the name of DOBBIN DITCH COMPANY (perfected under Permit S-2696)
Use: DOMESTIC and SUPPLEMENTAL IRRIGATION of 15.8 ACRES
Priority Date: JULY 20, 1915
Rate: 0.13 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 in case of rotation.

Source: EAGLE CAP RESERVOIR in WALLOWA LAKE

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q |
|-----|------|-----|-----|-------|
| 3 S | 45 E | WM | 5 | NW NW |

Authorized Place of Use:

| SUPPLEMENTAL IRRIGATION AND DOMESTIC | | | | | |
|--------------------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 2 S | 45 E | WM | 29 | NE SW | 10.0 |
| 2 S | 45 E | WM | 29 | NW SW | 5.8 |
| Total | | | | | 15.8 |

20. The Department received information from the applicant that better describes the location of the authorized points of diversion for Certificate 9311 as follows:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|---|
| 3 S | 45 E | WM | 5 | NW NW | POD 1 - 940 FEET SOUTH AND 1500 FEET EAST FROM THE NW CORNER OF SECTION 5 |

21. Transfer Application T-13459 proposes to change the place of use of the right to:

| SUPPLEMENTAL IRRIGATION AND DOMESTIC | | | | | |
|--------------------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 1 S | 44 E | WM | 32 | SE SE | 2.6 |
| 1 S | 44 E | WM | 33 | SW SW | 13.2 |
| Total | | | | | 15.8 |

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

Certificate: 48403 in the name of ALDER SLOPE DITCH COMPANY (confirmed by WALLOWA RIVER)

Use: IRRIGATION of 5.0 ACRES and DOMESTIC

Priority Date: 4:00 P.M., NOVEMBER 30, 1901

Limit/Duty: Shall not exceed 1.5 acre feet per acre during any period of 30 days prior to July 31st of each year, and thereafter not to exceed 1 acre foot per acre during the entire remainder of the irrigation season.

Source: HURRICANE CREEK, a tributary of WALLOWA RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|---|
| 3 S | 44 E | WM | 3 | NE NE | ALDER SLOPE DITCH - SOUTH 76 DEGREES 02 MINUTES WEST, 49 FEET FROM THE NE CORNER OF SECTION 3 |

Authorized Place of Use:

| IRRIGATION - TRACT NO. 18 | | | | | | |
|---------------------------|------|-----|-----|-------|------|-------|
| Twp | Rng | Mer | Sec | Q-Q | GLot | Acres |
| 2 S | 44 E | WM | 5 | NE NE | 1 | 1.3 |
| 2 S | 44 E | WM | 5 | SE NE | | 3.7 |
| Total | | | | | | 5.0 |

23. Transfer Application T-13459 proposes to change the place of use of the right to:

| IRRIGATION – TRACT NO. 18 | | | | | |
|---------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 1 S | 44 E | WM | 33 | SW SW | 5.0 |

24. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is currently equipped with an appropriate fish screening and/or by-pass device.

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

- 25. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
- 26. 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-13459.
- 27. The proposed changes would not result in enlargement of the rights.
- 28. The proposed changes would not result in injury to other water rights.
- 29. All other application requirements are met.

Determination and Proposed Action

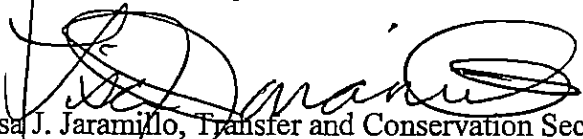
The change in point of diversion and change in places of use proposed in Transfer Application T-13459 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-13459 is approved, the final order will include the following:

- 1. *The change in point of diversion and change in place of use proposed in Transfer Application T-13459 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 7716, 9045, 9046, 9311, and 48403 and any related decree.*
- 3. *Water right Certificates 7716, 9045, 9046, 9311, and 48403 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.*
- 4. *The quantity of water, as authorized by Certificate 7716, diverted at the new point of diversion (Lower Alder Slope), shall not exceed the quantity of water lawfully available at the original points of diversion (Dam and Big Bend Ditch).*

5. *Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.*
6. *The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.*
7. *The former place 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, 2022**. 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 **MAY 05 2021**


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

This Preliminary Determination was prepared by 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

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.

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 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.



Oregon

Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

May 5, 2021

ERL MCLAUGHLIN
65708 SUNRISE RD
ENTERPRISE, OR 97828

SUBJECT: Water Right Transfer Application T-13459

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13459. 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 Wallowa County Chieftain 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.

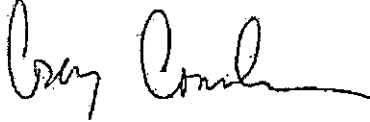
If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

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 or (503) 986-0825, if I may be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Corey Courchane". The signature is fluid and cursive, with a long horizontal stroke at the end.

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-13459
David D. Bates, District 7 Watermaster (*via e-mail*)

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