

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13617, Harney County	)	PROPOSING APPROVAL FOR AN
	)	ADDITIONAL POINT OF APPROPRIATION

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

BOWYER-PECK RANCHES, LLC
PO BOX 415
TROUT LAKE, WA 98650-0415

Findings of Fact

1. On February 16, 2021, BOWYER-PECK RANCHES, LLC filed an application for an additional point of appropriation under Certificate 90398. The Department assigned the application number T-13617.
2. Notice of the application for transfer was published on March 2, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 25, 2021, the agent for the applicant sent a revised Table 1 and map to the Department, to correct the proposed point of appropriation in the application.
4. On May 29, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13617 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 28, 2021, for the applicant to respond.

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 June 30, 2021, the agent for the applicant requested that the Department extend the completion date to 2026, stating that the applicant will need the time to build the irrigation system. 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 right to be transferred is as follows:

Certificate: 90398 in the name of BOWYER-PECK RANCHES LLC (perfected under Permit G-15206)

Use: IRRIGATION of 133.6 ACRES

Priority Date: DECEMBER 5, 2000

Rate: 1.67 CUBIC FEET PER SECOND

Limit/Duty: The amount of water used for irrigation under this right, 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 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

Period of Use: April 15 through October 1

Source: A WELL in MALHEUR LAKE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	33 E	WM	25	SE NE	WELL #1 - 1324 FEET SOUTH AND 1349 FEET WEST FROM THE NE CORNER OF SECTION 2

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	33 E	WM	25	NE NE	32.3
25 S	33 E	WM	25	NW NE	34.5
25 S	33 E	WM	25	SW NE	34.5
25 S	33 E	WM	25	SE NE	32.3
TOTAL					133.6

7. Transfer Application T-13617 proposes an additional point of appropriation approximately 0.28 mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	33 E	WM	25	NE NE	WELL #2 - 100 FEET SOUTH AND 510 FEET WEST FROM THE NE CORNER OF SECTION 25

Transfer Review Criteria (OAR 690-380-4010)

8. 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 right is subject to forfeiture under ORS 540.610.

9. 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-13617.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.
12. All other application requirements are met.

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Determination and Proposed Action

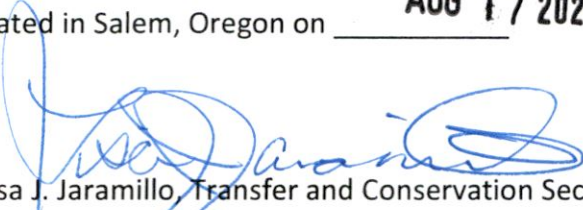
The additional point of appropriation proposed in Transfer Application T-13617 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-13617 is approved, the final order will include the following:

1. *The additional point of appropriation proposed in Transfer Application T-13617 is 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 90398 and any related decree.*
3. *Water right Certificate 90398 is cancelled.*
4. *The quantity of water diverted at the 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).*
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 point of appropriation (new and existing).*
 - 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.*
6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*

7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2026**. 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 change and full beneficial use of the water.*
8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on **AUG 17 2021**



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 about the information in this document, you may reach me at 503-986-0864 or tamera.l.smith@oregon.gov

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 these proceedings under the federal service members 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
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Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

AUGUST 17, 2021

BOWYER-PECK RANCHES, LLC
PO BOX 415
TROUT LAKE, WA 98650-0415

SUBJECT: Water Right Transfer Application T-13617

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13617. 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 Burns Times-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.

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 tamera.l.smith@oregon.gov or 503-986-0864 if I may be of assistance.

Kindest regards,

A handwritten signature in black ink, appearing to read 'Tamera L. Smith', with a stylized flourish at the end.

Transfer Caseworker
Transfer and Conservation Section

cc: Transfer Application file T-13617
J R. Johnson, District 10 Watermaster (*via e-mail*)
John A. Short, Agent for the applicant (*via e-mail*)

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