



# Oregon

Kate Brown, Governor

## Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

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December 1, 2021

VIA CERTIFIED MAIL AND E-MAIL

### **Applicant**

V BOX LAND AND CATTLE, INC.

PO BOX 156

JUNTURA, OR 97911-0156

SUBJECT: Water Right Transfer Application T-13662

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13662. 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.

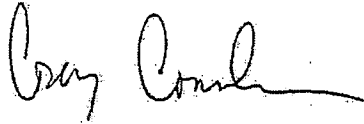
If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

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 [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@oregon.gov) or (503) 979-3917, 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: Transfer Application file T-13662  
J.R. Johnson, District 10 Watermaster (*via e-mail*)  
Scott D. Montgomery, Agent for the applicant (*via e-mail*)

encs

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13662, Malheur County	)	PROPOSING APPROVAL OF ADDITIONAL
	)	POINTS 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**

V BOX LAND AND CATTLE, INC.  
PO BOX 156  
JUNTURA, OR 97911-0156

**Findings of Fact**

1. On April 1, 2021, V BOX LAND AND CATTLE, INC. filed an application for additional points of appropriation under Certificates 41127 and 93006. The Department assigned the application number T-13662.
2. Notice of the application for transfer was published on April 20, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 22, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13662 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 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.
4. On October 1, 2021, the applicant's agent requested to extend the date to complete beneficial use of the water to October 1, 2024, due to the amount of proposed points of appropriation, and the length of time needed to secure a well driller.

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

**Certificate:** 41127 in the name of ROSS H. LEVANGER (perfected under Permit G-3705)  
**Use:** SUPPLEMENTAL IRRIGATION of 98.6 ACRES  
**Priority Date:** MAY 31, 1967  
**Rate:** 1.23 CUBIC FEET 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 per acre for each acre irrigated during the irrigation season of each year; provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.  
**Source:** A WELL, a tributary of GRANITE CREEK

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	38 E	WM	12	NW SW	WELL #1 - 720 FEET SOUTH AND 4630 FEET WEST FROM THE E1/4 CORNER OF SECTION 12

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	38 E	WM	11	NE SE	29.6
24 S	38 E	WM	11	NW SE	18.5
24 S	38 E	WM	11	SW SE	9.8
24 S	38 E	WM	11	SE SE	23.0
24 S	38 E	WM	12	NW SW	12.4
24 S	38 E	WM	12	SW SW	5.3
Total					98.6

6. Transfer Application T-13662 proposes additional points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original point of appropriation in feet (ft.) or miles (mi.)
24 S	38 E	WM	1	SW SW	WELL #12 - 5580 FEET NORTH AND 4060 FEET WEST FROM THE SE CORNER OF SECTION 12	0.7 mi.
24 S	38 E	WM	12	NW NW	WELL #7 - 4490 FEET NORTH AND 4550 FEET WEST FROM THE SE CORNER OF SECTION 12	0.5 mi.
24 S	38 E	WM	12	SW NW	WELL #9 - 3040 FEET NORTH AND 4830 FEET WEST FROM THE SE CORNER OF SECTION 12	0.2 mi.

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original point of appropriation in feet (ft.) or miles (mi.)
24 S	38 E	WM	12	SE NW	WELL #10 - 3100 FEET NORTH AND 3620 FEET WEST FROM THE SE CORNER OF SECTION 12	0.3 mi.
24 S	38 E	WM	12	NW SW	WELL #5 - 1880 FEET NORTH AND 4625 FEET WEST FROM THE SE CORNER OF SECTION 12	93.0 ft.
24 S	38 E	WM	12	SW SW	WELL #8 - 740 FEET NORTH AND 4610 FEET WEST FROM THE SE CORNER OF SECTION 12	0.2 mi.
24 S	38 E	WM	12	SW SW	WELL #11 - 420 FEET NORTH AND 4600 FEET WEST FROM THE SE CORNER OF SECTION 12	0.3 mi.
24 S	38 E	WM	12	SE SW	WELL #2 - 1075 FEET NORTH AND 3015 FEET WEST FROM THE SE CORNER OF SECTION 12	0.4 mi.
24 S	38 E	WM	12	SE SW	WELL #3 - 1260 FEET NORTH AND 3355 FEET WEST FROM THE SE CORNER OF SECTION 12	0.3 mi.
24 S	38 E	WM	12	SE SW	WELL #6 - 1095 FEET NORTH AND 3035 FEET WEST FROM THE SE CORNER OF SECTION 12	0.3 mi.
24 S	38 E	WM	13	NW NW	WELL #4 - 150 FEET SOUTH AND 4665 FEET WEST FROM THE NE CORNER OF SECTION 13	0.4 mi.

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

**Certificate:** 93006 in the name of V BOX LAND AND LIVESTOCK (perfected under Permit G-13366)

**Use:** IRRIGATION OF 95.1 ACRES AND SUPPLEMENTAL IRRIGATION OF 177.5 ACRES

**Priority Date:** MAY 13, 1997

**Rate:** NOT TO EXCEED A MAXIMUM CUMULATIVE TOTAL OF 3.41 CUBIC FEET PER SECOND (CFS), BEING 1.19 CFS FOR IRRIGATION AND 2.22 CFS FOR SUPPLEMENTAL IRRIGATION

**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) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

**Period of Use:** MARCH 1 THROUGH OCTOBER 31

**Source:** TWO WELLS in GRANITE CREEK BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	38 E	WM	12	NW SW	WELL 1 - 1900 FEET NORTH AND 4625 FEET WEST FROM THE SE CORNER OF SECTION 12
24 S	38 E	WM	12	SE SW	WELL 2 - 1075 FEET NORTH AND 3015 FEET WEST FROM THE SE CORNER OF SECTION 12

**Authorized Place of Use:**

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	38 E	WM	1	SW SW	0.5
24 S	38 E	WM	11	SW NE	1.5
24 S	38 E	WM	11	SE NE	6.4
24 S	38 E	WM	11	SE SE	2.4
24 S	38 E	WM	12	SW NW	1.9
24 S	38 E	WM	12	NE SW	36.5
24 S	38 E	WM	12	SW SW	1.9
24 S	38 E	WM	12	SE SW	25.1
24 S	38 E	WM	12	NW SE	11.7
24 S	38 E	WM	12	SW SE	7.2
Total					95.1

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	38 E	WM	1	SW SW	3.1
24 S	38 E	WM	1	SE SW	0.6
24 S	38 E	WM	11	NE NE	4.0
24 S	38 E	WM	11	SW NE	3.3
24 S	38 E	WM	11	SE NE	10.4
24 S	38 E	WM	11	NE SE	10.4
24 S	38 E	WM	11	NW SE	5.8
24 S	38 E	WM	12	NE NW	24.8
24 S	38 E	WM	12	NW NW	37.0
24 S	38 E	WM	12	SW NW	20.0
24 S	38 E	WM	12	SE NW	14.8
24 S	38 E	WM	12	NW SW	14.3
24 S	38 E	WM	12	SW SW	10.5
24 S	38 E	WM	12	SE SW	13.6
24 S	38 E	WM	12	SW SE	4.9
Total					177.5

8. Transfer Application T-13662 proposes additional points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original point of appropriation in feet (ft.) or miles (mi.)
24 S	38 E	WM	1	SW SW	WELL #12 - 5580 FEET NORTH AND 4060 FEET WEST FROM THE SE CORNER OF SECTION 12	0.7 mi.

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original point of appropriation in feet (ft.) or miles (mi.)
24 S	38 E	WM	12	NW NW	WELL #7 - 4490 FEET NORTH AND 4550 FEET WEST FROM THE SE CORNER OF SECTION 12	0.5 mi.
24 S	38 E	WM	12	SW NW	WELL #9 - 3040 FEET NORTH AND 4830 FEET WEST FROM THE SE CORNER OF SECTION 12	0.2 mi.
24 S	38 E	WM	12	SE NW	WELL #10 - 3100 FEET NORTH AND 3620 FEET WEST FROM THE SE CORNER OF SECTION 12	0.3 mi.
24 S	38 E	WM	12	NW SW	WELL #5 - 1880 FEET NORTH AND 4625 FEET WEST FROM THE SE CORNER OF SECTION 12	93 ft.
24 S	38 E	WM	12	SW SW	WELL #8 - 740 FEET NORTH AND 4610 FEET WEST FROM THE SE CORNER OF SECTION 12	0.2 mi.
24 S	38 E	WM	12	SW SW	WELL #11 - 420 FEET NORTH AND 4600 FEET WEST FROM THE SE CORNER OF SECTION 12	0.3 mi.
24 S	38 E	WM	12	SE SW	WELL #3 - 1260 FEET NORTH AND 3355 FEET WEST FROM THE SE CORNER OF SECTION 12	0.3 mi.
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24 S	38 E	WM	13	NW NW	WELL #4 - 150 FEET SOUTH AND 4665 FEET WEST FROM THE NE CORNER OF SECTION 13	0.4 mi.

***Transfer Review Criteria (OAR 690-380-4010)***

9. 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.
10. 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-13662.
11. The proposed change would not result in enlargement of the rights.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

## **Determination and Proposed Action**

The additional points of appropriation proposed in Transfer Application T-13662 appear 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-13662 is approved, the final order will include the following:*

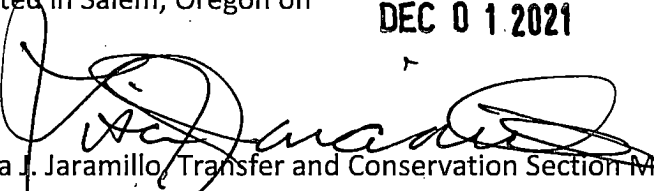
1. *The additional points of appropriation proposed in Transfer Application T-13662 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 41127 and 93006, and any related decree.*
3. *Water right Certificates 41127 and 93006 are cancelled. A new certificate will be issued describing that portion of Certificate 41127 not affected by this transfer.*
4. *The quantity of water diverted under the right described by Certificate 41127 at the new additional points of appropriation (Wells 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12), 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. *The quantity of water diverted under the right described by Certificate 93006 at the new additional points of appropriation (Wells 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12), together with that diverted at the original points of appropriation (Well #1 and Well #2), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well #1 and Well #2).*
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 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.*
7. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*



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 change 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

**DEC 01 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 503-979-3917 or [corey.a.courchane@oregon.gov](mailto: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 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>