



**Oregon**  
Kate Brown, Governor

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

August 3, 2022

VIA CERTIFIED MAIL AND E-MAIL

BROKEN SPUR RANCH LLC  
30522 OLDFIELD ST  
HERMISTON, OR 97838

SUBJECT: Water Right Transfer Application T-13276

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13276. 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 East Oregonian 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.

Please do not hesitate to contact me at 503-986-0892 or [Joan.M.SMITH@water.oregon.gov](mailto:Joan.M.SMITH@water.oregon.gov) if I may be of assistance.

Sincerely,

Joan Smith  
Transfer Specialist  
Transfer and Conservation Section

cc: T-13276  
Gregory M. Silbernagel, District 5 Watermaster (*via e-mail*)  
Janet Neuman, Agent for the applicant (*via e-mail*)

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13276, Umatilla County	)	PROPOSING APPROVAL OF AN
	)	ADDITIONAL POINT OF APPROPRIATION,
	)	PLACE OF USE CHANGES, AND THE
	)	PARTIAL DIMINUTION OF WATER RIGHTS

**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**

BROKEN SPUR RANCH LLC  
30522 OLDFIELD ST  
HERMISTON, OR 97838

**Findings of Fact**

1. On October 21, 2019, BROKEN SPUR RANCH LLC filed an application for additional points of appropriation under Certificates 53743, 82164, and 86784, to change the places of use under Certificates 2545, 53122, 53743, 82164, and 86784, and the partial diminution of Certificates 53743, 82164, and 86784. The Department assigned the application number T-13276.
2. Notice of the application for transfer was published on October 29, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 3, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13276 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of June 3, 2022, for the applicants to respond. The applicants 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.

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.

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

**Certificate:** 2545 in the name of A.C. HENDERSON & SONS (confirmed by Umatilla River Decree Vol. 3 at Page 127)

**Use:** IRRIGATION of 95.6 ACRES

**Priority Date:** 1891

**Rate:** 1.2 CUBIC FEET PER SECOND SUBJECT TO THE PROVISIONS OF PARAGRAPH 33 OF SAID DECREE

**Source:** EAST BIRCH CREEK, tributary of the UMATILLA RIVER

**Authorized Point of Diversion:**

Twtp	Rng	Mer	Sec	Measured Distances
1 S	32 E	WM	28	PRIVATE DITCH

**Authorized Place of Use:**

IRRIGATION					
Twtp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW NW	4.0
1 S	32 E	WM	28	SW NW	20.6
1 S	32 E	WM	28	SE NW	4.5
1 S	32 E	WM	28	NE SW	11.5
1 S	32 E	WM	28	NW SW	8.5
1 S	32 E	WM	28	SW SW	10.5
1 S	32 E	WM	28	SE SW	3.0
1 S	32 E	WM	33	NE NW	22.0
1 S	32 E	WM	33	NW NW	2.0
1 S	32 E	WM	33	SE NW	9.0
Total:					95.6

5. Certificate 2545 does not describe the duty and rate limit per acre; however, information is available from the Umatilla River Decree indicating that the duty allowed for the right is one-eightieth of one cubic foot per second per acre and the duty limit as 4.5 acre-feet per acre consistent with paragraph 33 of the Umatilla River Decree and all other conditions and limitations contained in said decree.
6. Certificate 2545 states, East Birch Creek is a tributary of the Umatilla River, however, East Birch Creek is a tributary to Birch Creek, and both Creeks are tributaries of the Umatilla River.
7. Water right Certificate 2545 does not provide a detailed description of the point of diversion, however information is available from the applicant describing the point of diversion as follows:

Twtp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	32 E	WM	33	SE NW	PUMPING PLANT - 1345 FEET SOUTH AND 830 FEET WEST FROM THE N 1/4 CORNER OF SECTION 33

8. Transfer Application T-13276 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW NW	5.6
1 S	32 E	WM	28	SW NW	17.9
1 S	32 E	WM	28	SE NW	6.0
1 S	32 E	WM	28	NE SW	8.6
1 S	32 E	WM	28	NW SW	16.2
1 S	32 E	WM	28	SW SW	8.8
1 S	32 E	WM	28	SE SW	5.9
1 S	32 E	WM	28	NE NW	19.8
1 S	32 E	WM	33	NW NW	3.0
1 S	32 E	WM	33	SE NW	3.8
Total:					95.6

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

**Certificate:** 53122 in the name of JOHN P MCMANUS, PRESIDENT, APPLEBURG WATER COMPANY (confirmed by Umatilla River Decree Vol. 3, Page 127)

**Use:** IRRIGATION of 21.5 ACRES

**Priority Date:** MAY 31, 1909

**Rate:** 0.27 CUBIC FEET PER SECOND SUBJECT TO THE CONDITIONS OF PARAGRAPH 33 OF SAID DECREE

**Source:** EAST BIRCH CREEK tributary of UMATILLA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Measured Distances
1 S	32 E	WM	28	Not Described

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NE NW	4.2
1 S	32 E	WM	28	NW NW	15.8
1 S	32 E	WM	28	SE NW	1.5
Total:					21.5

10. Certificate 53122 does not describe the duty and rate limit per acre; however, information is available from the Umatilla River Decree indicating that the duty allowed for the right is one-eightieth of one cubic foot per second per acre and the duty limit as 4.5 acre-feet per acre consistent with paragraph 33 of the Umatilla River Decree and all other conditions and limitations contained in said decree.

11. Transfer Application T-13276 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NE NW	3.7
1 S	32 E	WM	28	NW NW	16.2
1 S	32 E	WM	28	SW NW	1.6
Total:					21.5

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

**Certificate:** 53743 in the name of DIXIE CUMISKEY (perfected under Permit G-6788)  
**Use:** IRRIGATION OF 16.1 ACRES and SUPPLEMENTAL IRRIGATION of 6.8 ACRES  
**Priority Date:** JUNE 2, 1976  
**Rate:** 0.29 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 for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet for each acre irrigated during the irrigation season of each year.  
**Source:** WELL No. 1, a tributary of EAST BIRCH CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	32 E	WM	21	NE SW	250 FEET SOUTH AND 1020 FEET WEST FROM THE C 1/4 CORNER OF SECTION 21

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	21	NE SW	16.1

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	21	SE SW	6.8

13. Transfer Application T-13276 proposes additional points of appropriation with approximate distances in mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from Well No. 1
1 S	32 E	WM	21	SE SW	WELL 2 - 733 FEET NORTH AND 1429 FEET EAST FROM THE SW CORNER OF SECTION 21	0.34
1 S	32 E	WM	28	SE NW	WELL 1 - 610 FEET NORTH AND 1350 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 28	0.59

14. Transfer Application T-13276 also proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW NW	7.6
1 S	32 E	WM	28	SW NW	6.3
1 S	32 E	WM	28	SE NW	3.9
1 S	32 E	WM	28	NE SW	5.1
Total:					22.9

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

**Certificate:** 82164 in the name of THOMAS E. RUGG (perfected under Permit G-7968)

**Use:** PRIMARY IRRIGATION OF 8.1 ACRES AND SUPPLEMENTAL IRRIGATION OF 67.4 ACRES

**Priority Date:** AUGUST 31, 1977

**Rate:** 0.94 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, 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.

**Source:** ONE WELL in the UMATILLA BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	32 E	WM	28	SE NW	ONE WELL - 610 FEET NORTH AND 1350 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 28

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW SW	8.0
1 S	32 E	WM	28	SW SW	0.1
Total					8.1

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NE NW	1.3
1 S	32 E	WM	28	NW NW	18.8
1 S	32 E	WM	28	SW NW	20.6
1 S	32 E	WM	28	SE NW	1.4
1 S	32 E	WM	28	NE SW	9.1
1 S	32 E	WM	28	NW SW	8.2
1 S	32 E	WM	28	SW SW	8.0
Total					67.4

16. Transfer Application T-13276 proposes additional points of appropriation with approximate distances in mile from the existing point of appropriation to:

Twsp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from Well No. 1
1 S	32 E	WM	21	SE SW	WELL 2 – 733 FEET NORTH AND 1429 FEET EAST FROM THE SW CORNER OF SECTION 21	0.50
1 S	32 E	WM	21	NE SW	WELL 3 - 250 FEET SOUTH AND 1020 FEET WEST FROM THE CENTER 1/4 CORNER OF SECTION 21	0.80

17. Transfer Application T-13276 also proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twsp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW SW	8.0
1 S	32 E	WM	28	SW SW	0.1
1 S	32 E	WM	28	NE NW	2.5
1 S	32 E	WM	28	SW NW	11.9
1 S	32 E	WM	28	NE SW	3.5
1 S	32 E	WM	28	NW SW	8.2
1 S	32 E	WM	28	SW SW	8.8
1 S	32 E	WM	28	SE SW	5.9
1 S	32 E	WM	33	NE NW	19.8
1 S	32 E	WM	33	NW NW	3.0
1 S	32 E	WM	33	SE NW	3.8
Total					75.5

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

**Certificate:** 86784 in the name of ARTHUR J. FALK AND KAREN L. FALK (perfected under Permit G-5510)

**Use:** IRRIGATION of 13.94 ACRES

**Priority Date:** JANUARY 11, 1972

**Rate:** 0.18 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, is limited to a diversion of ONE-EIGHTIETH 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL in the EAST BIRCH CREEK BASIN

**Authorized Point of Appropriation:**

Twsp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	32 E	WM	21	SE SW	733 FEET NORTH AND 1429 FEET EAST FROM THE SW CORNER OF SECTION 21

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	21	SE SW	13.94

19. The original point of appropriation for Certificate 86784 is as described below, per conditions of the certificate water must be available at this point:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	32 E	WM	21	SW SW	1000 FEET NORTH AND 750 FEET EAST FROM THE SW CORNER OF SECTION 21

20. Transfer Application T-13276 proposes additional points of appropriation with approximate distances in mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from Well No. 2
1 S	32 E	WM	21	NE SW	WELL 3 - 250 FEET SOUTH AND 1020 FEET WEST FROM THE CENTER 1/4 CORNER OF SECTION 21	0.30 N
1 S	32 E	WM	28	SE NW	WELL 1 - 610 FEET NORTH AND 1350 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 28	0.50 S

21. Transfer Application T-13276 also proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW NW	13.94

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

22. 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.
23. 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-13276.
24. The proposed changes, as conditioned, would not result in enlargement of the rights.
25. The proposed changes would not result in injury to other water rights.
26. All other application requirements are met.



**Partial Diminishment of Water Rights**

27. On October 21, 2019, affidavits and proof of ownership documents were submitted by Bentio Mendelez Jr., the affidavits propose the diminution of portions of Certificates 53743, 82164, and 86784 from Primary Irrigation to Supplemental Irrigation in accordance with 690-380-5120, as described in the findings below.
28. The portion of the first right to be diminished from primary irrigation to supplemental irrigation is as follows:

**Certificate:** 53743 in the name of DIXIE CUMISKEY (perfected under Permit G-6788)  
**Use:** IRRIGATION of 16.1 ACRES  
**Priority Date:** JUNE 2, 1976  
**Rate:** 0.20 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, 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.  
**Source:** WELL No 1. A tributary of EAST BIRCH CREEK

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	32 E	WM	21	NE SW	250 FEET SOUTH AND 1020 FEET WEST FROM THE C1/4 CORNER OF SECTION 21

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW NW	7.6
1 S	32 E	WM	28	SW NW	6.3
1 S	32 E	WM	28	SE NW	2.2
Total:					16.1

29. The portion of the right Certificate 53743 to be diminished to supplemental irrigation is described in the table below:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW NW	7.6
1 S	32 E	WM	28	SW NW	6.3
1 S	32 E	WM	28	SE NW	2.2
Total:					16.1

30. The portion of the second right to be diminished from primary irrigation to supplemental irrigation is as follows:

**Certificate:** 82164 in the name of THOMAS E. RUGG (perfected under Permit G-7968)

**Use:** IRRIGATION of 8.1 ACRES

**Priority Date:** AUGUST 31, 1977

**Rate:** 0.10 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, is limited to a diversion of ONE-EIGHTIETH, 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 3.0, acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** ONE WELL in the UMATILLA

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	32 E	WM	28	SE NW	610 FEET NORTH AND 1350 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 28

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW SW	8.00
1 S	32 E	WM	28	SW SW	0.10

31. The portion of Certificate 82164 to be diminished to supplemental irrigation is described in the table below:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW SW	8.00
1 S	32 E	WM	28	SW SW	0.10

32. The portion of the third right to be diminished from primary irrigation to supplemental irrigation is as follows:

**Certificate:** 86784 in the name of ARTHUR J. AND KAREN L. FALK (perfected under Permit G-5510)

**Use:** IRRIGATION of 13.94 ACRES

**Priority Date:** JANUARY 11, 1972

**Rate:** 0.18 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, is limited to a diversion of ONE-EIGHTIETH 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 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL within the EAST BIRCH CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	32 E	WM	21	SE SW	733 FEET NORTH AND 1429 FEET EAST FROM THE SW CORNER OF SECTION 21

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW NW	13.94

33. The portion of the right Certificate 53743 to be diminished to supplemental irrigation is described in the table below:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW NW	13.94

**Determination and Proposed Action**

The additional points of diversion and change in places of use proposed in Transfer Application T-13276 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the diminished right should be diminished. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the diminished rights will be diminished.

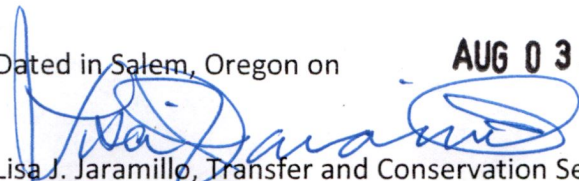
*If Transfer Application T-13276 is approved, the final order will include the following:*

1. *The additional points of diversion and change in places of use proposed in Transfer Application T-13276 are approved. The portion of the rights that have been diminished are diminished to supplemental irrigation.*
2. *The right to the use of the water is restricted to beneficial use at the places of use described and is subject to all other conditions and limitations contained in Certificates 2545, 53122, 53743, 82164, 86784, orders, and any related decree.*

3. *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.*
  - 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.*
4. *Water right Certificates 2545, 53122, 53743, 82164, and 86784 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer and diminutions.*
5. *The portions of Certificates 53743, 82164, and 86784 as described in the findings are diminished to supplemental irrigation.*
6. *The quantity of water diverted at the additional points of appropriation, together with that diverted at the original points of appropriation shall not exceed the quantity of water lawfully available at the original points of diversion.*
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, 2023**. 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

**AUG 03 2022**

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

This preliminary determination was prepared by Joan Smith. If you have any questions about the information in this document, you may reach me at 503-986-0892 or Joan.m.Smith@water.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 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.