



Oregon

Tina Kotek, Governor

Water Resources Department

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May 30, 2023

VIA CERTIFIED MAIL AND E-MAIL

Applicant

BRUCE ERNST
PO BOX 460
SAINT PAUL, OR 97137

SUBJECT: Water Right Transfer Application T-14049

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-14049. 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 Woodburn Independent 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 corey.a.courchane@water.oregon.gov or (503) 979-3917, if I may be of assistance.

Sincerely,

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

Corey Courchane
Allocation of Conserved Water
Transfer and Conservation Section

cc: Transfer Application file T-14049
Gregory J. Wacker, District 16 Watermaster (*via e-mail*)
Doann Hamilton, 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-14049, Marion County)	PROPOSING APPROVAL FOR ADDITIONAL
)	POINTS OF APPROPRIATION, A CHANGE
)	IN PLACE OF USE, AND PARTIAL
)	CANCELLATION OF A WATER RIGHT

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

BRUCE ERNST
PO BOX 460
SAINT PAUL, OR 97137

Findings of Fact

1. On July 15, 2022, BRUCE ERNST filed an application for additional points of appropriation, to change the place of use, and to cancel a portion of the place of use under Certificate 34191. The Department assigned the application number T-14049.
2. Notice of the application for transfer was published on August 2, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

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.

3. On March 8, 2023, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-14049 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 7, 2023, 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. The portion of the right to be transferred is as follows:

Certificate: 34191 in the name of MICHAEL E. HOPFER (perfected under Permit G-2649)
Use: IRRIGATION of 68.3 ACRES
Priority Date: APRIL 30, 1964
Rate: 0.42 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL a tributary of WILLAMETTE RIVER (COLUMBIA RIVER)

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	4	SW SE	70	WELL 1 - 610 FEET SOUTH AND 960 FEET EAST FROM THE NW CORNER OF DLC 70

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	2 W	WM	4	NE SW	70	4.2
4 S	2 W	WM	4	SE SW	70	15.4
4 S	2 W	WM	4	NE SE	70	2.1
4 S	2 W	WM	4	NW SE	70	8.6
4 S	2 W	WM	4	SW SE	70	29.8
4 S	2 W	WM	4	SE SE	70	5.1
4 S	2 W	WM	9	NE NE	70	0.2
4 S	2 W	WM	9	NW NE	70	2.9
Total						68.3

5. Certificate 34191 describes the point of appropriation; however, the applicant provided a more accurate description of the point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	4	SW SE	70	WELL 1 - 720 FEET SOUTH AND 1000 FEET EAST FROM THE NW CORNER OF DLC 70

6. Transfer Application T-14049 proposes additional points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approximate distance from original point of appropriation in feet (ft.)
4 S	2 W	WM	4	SW SE	70	WELL 2 - 635 FEET SOUTH AND 1000 FEET EAST FROM THE NW CORNER OF DLC 70	50 ft.
4 S	2 W	WM	4	SW SE	70	WELL 3 - 1200 FEET SOUTH AND 1905 FEET EAST FROM THE NW CORNER OF DLC 70	1100 ft.
4 S	2 W	WM	9	NE NE	70	WELL 4 - 2330 FEET SOUTH AND 1090 FEET WEST FROM THE NE CORNER OF DLC 70	2900 ft.

7. Transfer Application T-14049 also proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	Proposed POA
4 S	2 W	WM	4	NE SW	70	3.6	Wells 2, 3, and 4
4 S	2 W	WM	4	SE SW	70	10.9	Wells 2, 3, and 4
4 S	2 W	WM	4	SE SW	70	4.6	Re-described Well 1
4 S	2 W	WM	4	NE SE	70	2.0	Wells 2, 3, and 4
4 S	2 W	WM	4	NW SE	70	7.4	Wells 2, 3, and 4
4 S	2 W	WM	4	SW SE	70	28.4	Wells 2, 3, and 4
4 S	2 W	WM	4	SW SE	70	3.0	Re-described Well 1
4 S	2 W	WM	4	SE SE	70	5.4	Wells 2, 3, and 4
4 S	2 W	WM	9	NW NE	70	1.8	Wells 2, 3, and 4
4 S	2 W	WM	9	NE NW	70	1.2	Wells 2, 3, and 4
Total						68.3	

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-14049.
10. The proposed changes 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.

Partial Cancellation of a Water Right

13. On July 15, 2022, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Bruce Ernst. The right to be cancelled is as follows:

Certificate: 34191 in the name of MICHAEL E. HOPFER (perfected under Permit G-2649)
Use: IRRIGATION of 3.2 ACRES
Priority Date: APRIL 30, 1964
Rate: 0.02 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL a tributary of WILLAMETTE RIVER (COLUMBIA RIVER)

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	4	SW SE	70	610 FEET SOUTH AND 960 FEET EAST FROM THE NW CORNER OF DLC 70

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	2 W	WM	4	SW SE	70	2.3
4 S	2 W	WM	4	SE SE	70	0.9
Total						3.2

Determination and Proposed Action

The additional points of appropriation and change in place of use proposed in Transfer Application T-14049 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right will be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned right will be cancelled

If Transfer Application T-14049 is approved, the final order will include the following:

1. *The additional points of appropriation and change in place of use proposed in Transfer Application T-14049 are approved. The portion of the right that has been abandoned is cancelled.*

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 34191 and any related decree.*
3. *Water right Certificate 34191 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.*
4. *The quantity of water diverted at the additional points of appropriation (Wells 2, 3, & 4), 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. *The former place of use of the transferred right shall no longer receive water under the right.*
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 changes and full beneficial use of the water.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING 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@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.