



Oregon

Tina Kotek, Governor

Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone 503 986-0900

Fax 503 986-0904

www.oregon.gov/owrd

September 25, 2023

VIA CERTIFIED MAIL AND E-MAIL

Applicant

BRIDGE CREEK RANCH LLC
355 GOODPASTURE ISLAND RD
EUGENE, OR 97401

SUBJECT: Water Right Transfer Application T-14170

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-14170. 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 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 Department's notice.

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 don't hesitate to contact me at 503 979-9607 or Kim.R.French@water.oregon.gov, if I may be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Kim French". The signature is fluid and cursive, with the first name "Kim" being more prominent than the last name "French".

Kim French
Transfer Specialist
Transfer and Conservation Section

cc: T-14170
Kenneth C. Thiemann, District 21 Watermaster (*via e-mail*)
Elizabeth Howard, Lindsay Thane, 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-14170, Wheeler County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF DIVERSION

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

BRIDGE CREEK RANCH LLC
355 GOODPASTURE ISLAND ROAD
EUGENE, OR 97401

Findings of Fact

1. On December 8, 2021, Bridge Creek Ranch LLC filed a Transfer Application requesting a change in point of diversion under Certificate 68553, which authorizes the storage of water from Bear Creek (160.0 acre feet) and Bridge Creek (330.0 acre feet), tributaries of the John Day River, in Painted Hills Reservoir to be appropriated for beneficial use (irrigation) under secondary Permit S-48540 (Certificate 68554). The Oregon Water Resources Department (Department or OWRD) determined that the application could not be accepted at that time because, based upon guidance provided by the Oregon Department of Justice, a storage right does not qualify as a “water use subject to transfer” as defined in ORS 540.505(4) and therefore did not meet the criteria outlined in ORS 540.510 for filing a transfer application.
2. On December 5, 2022, a matter entitled “Bridge Creek Ranch, LLC vs. Oregon Water Resources Department; 22CV05598” came before the Marion County Circuit Court (Court) for hearing relating to a mandamus proceeding filed by the applicant.
3. On January 10, 2023, the Court issued a letter opinion that found “...storage of water for different purposes qualifies as ‘a water use.’ As such, a right to store water under a water certificate is a right to a ‘water use’ established by... a water certificate under ORS 540.505(4)(b).” The Court also found “...that OWRD has the authority to allow transfers of point of diversion and point of use for certificated storage rights under ORS 540.530.”

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 the newspaper notice or the Department’s weekly notice as prescribed by OAR 690-380-4020, whichever is later, of this preliminary determination.

4. On February 7, 2023, the Department filed an appeal of the Court's findings.
5. On February 1, 2023, the Marion County Circuit Court issued a Peremptory Writ of Mandamus citing facts and legal conclusions made in the Court's letter opinion entered on January 1, 2023, and ordering OWRD to begin processing Bridge Creek Ranch, LLC's application in accordance with the Petition for Writ of Mandamus within seven (7) days after OWRD's receipt of a new and complete application for transfer involving water right Certificate 68553.
6. On February 9, 2023, Bridge Creek Ranch LLC filed an application for a change in point of diversion under Certificate 68553. The Department deemed the application complete and assigned the application number T-14170.
7. Notice of the application for transfer was published on February 14, 2023, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On May 5, 2023, the applicant amended the application from a change in point of diversion to an additional point of diversion.
9. On July 31, 2023, the Department sent a copy of the draft Preliminary Determination to the applicant proposing to approve Transfer Application T-14170. The draft Preliminary Determination cover letter gave an August 31, 2023 deadline 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. The applicant requested until October 1, 2027 to complete the changes proposed under this transfer.

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

Certificate: 68553 in the name of WILLIAM SMITH PROPERTIES INC. (perfected under Permit R-9896)
Use: STORAGE for IRRIGATION
Priority Date: OCTOBER 17, 1983
Rate: 330.0 ACRE-FEET (AF)
Source: BRIDGE CREEK, tributary of THE JOHN DAY RIVER

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q
10 S	20 E	WM	25	NE SW
10 S	20 E	WM	25	NW SW
10 S	20 E	WM	25	SW SW
10 S	20 E	WM	25	SE SW
10 S	20 E	WM	26	SE SE
10 S	20 E	WM	36	NW NW

11. Certificate 68553 does not describe the location of authorized Bridge Creek POD 2; however, information is available describing the location as:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
11 S	21 E	WM	6	NE NE	BRIDGE CREEK POD 2 - 590 FEET SOUTH AND 2160 FEET EAST FROM THE N1/4 CORNER OF SECTION 6

12. Transfer Application T-14170 proposes an additional point of diversion on Bridge Creek located approximately 1,110 feet downstream from the existing authorized Bridge Creek POD 2, as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	21 E	WM	31	SE SE	POD 3 - 160 FEET NORTH AND 1850 FEET EAST FROM THE S1/4 CORNER OF SECTION 31

13. 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 not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

Transfer Review Criteria [OAR 690-380-4000(14), 690-380-4010(2) and 690-380-2110(2)]

14. Water has been stored within the five-year period prior to submittal of Transfer Application T-14170 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.
15. A water delivery system sufficient to store the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-14170.
16. The proposed point of diversion diverts water from the same source of surface water (Bridge Creek) as the authorized point of diversion (Bridge Creek POD 2), as required by OAR 690-380-2110(2).
17. The proposed change, as conditioned, would not result in enlargement of the right.
18. The proposed change, as conditioned, would not result in injury to other existing water rights.
19. All other application requirements are met.

Determination and Proposed Action

The additional point of diversion proposed in Transfer Application T-14170 appears 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-14170 is approved, the final order will include the following:

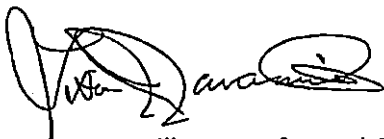
- 1. The additional point of diversion proposed in Transfer Application T-14170 is approved.*
- 2. The right to store the water is restricted to the place of storage described and is subject to all other conditions and limitations contained in Certificate 68553 and any related decree.*
- 3. Water right Certificate 68553 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
- 4. The quantity of water diverted for storage at the new point of diversion (POD 3) shall not exceed the quantity of water lawfully available at the original point of diversion (Bridge Creek POD 2).*
- 5. Water shall be acquired from the same source of surface water (Bridge Creek) as the original point of diversion (Bridge Creek POD 2).*
- 6. 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*
- 7. Water Use Measurement Conditions:*
 - a. Before diversion of water 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 diversion.*
 - 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.*
- 8. Reservoir Water Use Measurement Conditions:*
 - a. Before diversion of water may begin under this order, the water user shall install staff gages, or, with prior approval of the Director, other suitable measuring devices, that measure the entire range and stage between empty and full in each reservoir.*
 - b. Before diversion of water may begin under this order, if the reservoir is located in channel, weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and an adjustable outlet valve must be installed. The water user shall maintain such devices in good working order. A written waiver may be obtained, if in the judgment of the Director, the installation of weirs or other*

suitable measuring devices, or the adjustable outlet valve, will provide no public benefit.

- c. The water user shall allow the Watermaster access to the devices; provided however, where any device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
- 9. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a "Claim of Beneficial Use" report, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*
- 10. Completion of the change shall be made, consistent with the terms of this order, on or before **October 1, 2027**. A "Claim of Beneficial Use" report 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.*
- 11. After satisfactory proof of the change is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on

SEP 25 2023



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Kim French. If you have questions about the information in this document, you may reach me at 503 979-9607 or Kim.R.French@water.oregon.gov.

Protests

Under the provisions of ORS 540.520(6) & (7) and OAR 690-380-4030, within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, any person may file, jointly or severally, a protest expressing opposition of approval of the transfer application and disagreement with

this Preliminary Determination or a standing statement in support of this Preliminary Determination. If this Preliminary Determination determines that a change in point of diversion or appropriation would result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050. Protests and standing statements must be received by the Water Resources Department within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later.

Protests must be in writing and received in hard copy form with the appropriate statutory protest filing fee; protests cannot be filed by electronic mail. [OAR 690-002-0025(3) and 690-380-0100(9)]. The protest must include the following:

- The person's name, address, and telephone number;
- All reasonably ascertainable issues and all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue may preclude consideration of the issue during the hearing;
- If you are the applicant, a protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$950 required by ORS 536.050 and proof of service of the protest upon the applicant.

Requests for Standing

Under the provisions of OAR 690-380-4030(5), the Department shall provide to persons who have filed standing statements as defined under OAR 690-380-0100(11) notice of any differences between the Department's Preliminary Determination and the Final Order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

Requests for standing must be received in the Water Resources Department no later than 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the preliminary determination as issued.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been filed under OAR 690-380-4030. In accordance with OAR 690-380-4200, notice and conduct of the hearing shall:

- Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties stipulate otherwise; and
- If a protest has asserted that a water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

If after hearing the Department issues a proposed Final Order finding that a change in point of diversion or appropriation will result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050 within 15 days of receipt of the proposed order. Notwithstanding 690-002-0175, if the applicant files a notification of intent to pursue approval of the transfer under 690-380-5030 to 690-380-5050, the deadline for filing exceptions to the proposed order shall be 30 days after the Department provides notice to the parties that the transfer does not meet the requirements of 690-380-5030 to 690-380-5050.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear, or fail to appear at a scheduled hearing, the Director may issue a final order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions, or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 690-137-0555, an agency representative may represent partnerships, corporations, associations, governmental subdivisions or public, or private organizations if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active-duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Will Davidson at 503-507-2749.

If you have questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.

Address any correspondence to: Oregon Water Resources Department, Transfer and Conservation Section, 725 Summer Street NE, Suite A, Salem OR 97301-1266.