

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

In the Matter of Instream Transfer	)	PRELIMINARY DETERMINATION
Application T-13382, Josephine County	)	PROPOSING APPROVAL OF A CHANGE IN
	)	PLACE OF USE AND CHARACTER OF USE

**Authority**

Oregon Revised Statute (ORS) 540.505 to 540.580 establishes 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 Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

**Applicant**

Bryan Long  
1775 Leland Road  
Wolf Creek, Oregon 97497

**Agent**

Scott Fein Water Rights  
600 Tyler Creek Road  
Ashland, Oregon 97520

**Findings of Fact**

1. On March 2, 2020, Bryan Long filed an application to change the place of use and character of use under Certificates 15608, 16530 and 16533 to instream use. The Department assigned the application number T-13382.
2. Instream Transfer Application T-13382 has been submitted to offset the calculated impacts to the sensitive, threatened, and endangered fish species and the proposed impacts on surface water flows from Groundwater Application G-18792.
3. Instream Transfer Application T-13382 will be approved concurrently with the approval for Groundwater Application G-18792.
4. Notice of the application for transfer was published on March 10, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
5. On September 3, 2020, the applicant submitted a Historic Point of Diversion Transfer T-13515 to confirm the actual location of the point of diversion for Certificates 16530 and 16533.

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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6. On April 26, 2022, the Department issued a Final Order (Special Order Volume 122, Page 915) approving application T-13515.
7. Certificate 16530 has been cancelled and superseded by Certificate 96295 and Certificate 16533 has been cancelled and superseded by Certificate 96296.
8. On June 30, 2022 and December 30, 2022, the Department notified the Agent of the deficiencies in the application, being the land use notification, application map and two application pages. On January 1, 2023, and February 15, 2023, the agent submitted documentation resolving the deficiencies.
9. Consistent with land use requirements, prior to submitting the instream transfer application, the applicant provided notification of the intent to file the instream transfer application to Josephine County Planning Department. Additionally, the Department provided notice of the proposed action to Josephine County Planning Department upon receipt of Transfer Application T-13382.
10. On December 12, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to approve Instream Transfer Application T-13382 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 20, 2023, for the applicant to respond.
11. Following issuance of the draft Preliminary Determination, the agent for the applicant and the Watermaster for the Department commented on a few errors and additional language that was needed in the document. Therefore, the Department is issued a revised draft Preliminary Determination to correct and include the necessary information.
12. On January 13, 2023, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Instream Transfer Application T-13382 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of February 12, 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.
13. The entirety of the first right to be transferred is as follows:
 

<b>Certificate:</b>	15608 in the name of Charles G. Guth, Jr. and C. W. Johnston (perfected under Permit S-15550)
<b>Use:</b>	Irrigation of 22 acres; being 4.0 from Mackin Gulch and 18.0 acres from Grave Creek
<b>Priority Date:</b>	JULY 21, 1943
<b>Rate:</b>	0.27 cubic foot per second (CFS), being 0.05 c.f.s from Mackin Gulch and 0.22 c.f.s. from Grave Creek

**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 4.5 acre feet per acre for each acre irrigated during the irrigation season from April 2, to October 31, of each year and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

**Period of Use:** April 2 to October 31

**Source:** Mackin Gulch and Grave Creek, tributary of Grave Creek, a tributary of Rogue River

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
34 S	6 W	WM	3	SE SW	GRAVE CREEK
34 S	6 W	WM	4	NE SE	MACKIN GULCH

**Authorized Place of Use:**

IRRIGATION						
Mackin Gulch						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
34 S	6 W	WM	4	NE SE		2.0
34 S	6 W	WM	4	SE SE		2.0
Total						4.0

IRRIGATION						
Grave Creek						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
34 S	6 W	WM	3	SW SW	4	6.0
34 S	6 W	WM	4	SE SE		12.0
Total						18.0

14. Certificate 15608 does not describe the measured distances of the points of diversion; however, information is available from Department records indicating that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
34 S	6 W	WM	4	SW SE SE SE	GRAVE CREEK – BETWEEN A POINT 5 FEET SOUTH AND 650 FEET WEST FROM THE SE CORNER OF SECTION 4, AND 5 FEET SOUTH AND 1970 FEET WEST FROM THE SAID SE CORNER OF SECTION 4 BOTH WITHIN THE SOUTH HALF OF THE SE SECTION 4 (PORTABLE PUMPS)
34 S	6 W	WM	4	NE SE	MACKIN GULCH - 2100 FEET NORTH AND 750 FEET WEST FROM THE SE CORNER OF SECTION 4

15. An annual volume of 99.0 acre-feet of water may be beneficially used under this right.  
(4.5 AF/acre x 22.0 acres = 99.0 AF)

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

**Certificate:** 96295 in the name of Bryan Long (confirmed by decree of the Circuit Court of the State of Oregon for Jackson County and the said decree entered of record at Salem, in the Order Record of the State Engineer in Volume 4 at Page 1).  
**Use:** Irrigation of 6.5 acres  
**Priority Date:** 1891  
**Rate:** 0.11 CFS  
**Limit/Duty:** The amount of water to which such right is entitled is limited to an amount actually beneficially used.  
**Source:** Grave Creek, tributary of Rogue River

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
34 S	6 W	WM	4	SE SE	POD 1 – 65 FEET NORTH AND 60 FEET WEST FROM THE NE CORNER OF SECTION 9
34 S	6 W	WM	9	NW NE	POD 2 – 165 FEET SOUTH AND 2340 FEET WEST FROM THE NE CORNER OF SECTION 9

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	6 W	WM	10	NW NW	6.5

17. Certificate 96295 does not specify a rate per acre. To calculate the rate per acre; the total cfs for the certificate is divided by the total amount of acreage allowed in the certificate which gives you the rate per acre (1.09 cfs / 65.0 acres = 0.0168 cfs/per acre) then the cfs/per acre is multiplied by the number of acres being transferred instream (0.0168 cfs/per acre x 6.5 acres = 0.11 cfs).

18. Certificate 96295 does not specify a duty limit per acre. To calculate the duty of water and the annual volume of water allowed under the right; the total rate allowed in the certificate is multiplied by the number of days in the season of use and then multiplied by the conversion factor for cfs to acre-feet (1.09 cfs x 214 days x 1.98 = 461.85 af/total acreage), then the total af is divided by the total number of acres allowed in the certificate to get the af/per acre (461.85 af / 65.0 acres = 7.11 af/per acre); then the af/per acre is multiplied by the number of acres being transferred instream (7.11 af/per acre x 6.5 acres = 46.22 af).

19. An annual volume of 46.22 acre-feet of water may be beneficially used under this right.

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

**Certificate:** 96296 in the name of Bryan Long (confirmed by decree of the Circuit Court of the State of Oregon for Jackson County and the said decree entered of

record at Salem, in the Order Record of the State Engineer in Volume 4 at Page 1).

**Use:** Irrigation of 30 acres

**Priority Date:** 1891

**Rate:** 0.47 CFS

**Limit/Duty:** The amount of water to which such right is entitled is limited to an amount actually beneficially used.

**Source:** Grave Creek, tributary to Rogue River

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
34 S	6 W	WM	4	SE SE	POD 1 – 65 FEET NORTH AND 60 FEET WEST FROM THE NE CORNER OF SECTION 9
34 S	6 W	WM	9	NW NE	POD 2 – 165 FEET SOUTH AND 2340 FEET WEST FROM THE NE CORNER OF SECTION 9

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	6 W	WM	9	NE NE	7.0
34 S	6 W	WM	9	NW NE	4.0
34 S	6 W	WM	9	SW NE	6.0
34 S	6 W	WM	9	NE NW	13.0
Total					30.0

21. Certificate 96296 does not specify a rate per acre. To calculate the rate per acre; the total cfs for the certificate is divided by the total amount of acreage allowed in the certificate which gives you the rate per acre ( $1.79 \text{ cfs} / 115.0 \text{ acres} = 0.0156 \text{ cfs/per acre}$ ) then the cfs/per acre is multiplied by the number of acres being transferred instream ( $0.0156 \text{ cfs/per acre} \times 30.0 \text{ acres} = 0.47 \text{ cfs}$ ).
22. Certificate 96296 does not specify a duty limit per acre. To calculate the duty of water and the annual volume of water allowed under the right; the total rate allowed in the certificate is multiplied by the number of days in the season of use and then multiplied by the conversion factor for cfs to acre-feet ( $1.79 \text{ cfs} \times 214 \text{ days} \times 1.98 = 758.46 \text{ af/total acreage}$ ), then the total af is divided by the total number of acres allowed in the certificate to get the af/per acre ( $758.46 \text{ af} / 115.0 \text{ acres} = 6.60 \text{ af/per acre}$ ); then the af/per acre is multiplied by the number of acres being transferred instream ( $6.60 \text{ af/per acre} \times 30.0 \text{ acres} = 198.0 \text{ af}$ ).
23. A total of 198.0 acre-feet of water may be beneficially used annually under the existing right.
24. Certificate 96295 does not specify the irrigation season; however, the Rogue River Decree establishes the irrigation season for the area as April 1 through October 31.

25. Transfer Application T-13382 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values.

26. The applicant proposes the quantities of water to be transferred instream as follows:

Certificate	Instream Period	Instream Rate (cfs)	Instream Volume (acre-feet)
96295 (Previously 16530)	April to October	0.11	46.5
96296 (Previously 16533)	April to October	0.47	200.0
15608	April to October	0.27	114.5
Total		0.85	361.0

27. The applicant has requested that any instream water right established as a result of this instream transfer be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant has also requested that any instream water rights established as a result of this instream transfer replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date.

***Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)***

28. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.

29. 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-13382.

30. The quantities to be protected instream required modification to prevent injury and enlargement, and is as follows:

**Mackin Gulch, tributary to Grave Creek**

**Instream Reach:** From the authorized point of diversion shown below to the confluence with Grave Creek:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
34 S	6 W	WM	4	NE SE	MACKIN GULCH - 2100 FEET NORTH AND 750 FEET WEST FROM THE SE CORNER OF SECTION 4

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
15608	July 21, 1943	0.05	18.0	April 2 – October 31

**Grave Creek, tributary to Rogue River**

**Instream Reach No. 1:** From the authorized point of diversion shown below to the confluence with Mackin Gulch:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
34 S	6 W	WM	4	SW SE SE SE	GRAVE CREEK – BETWEEN A POINT 5 FEET SOUTH AND 650 FEET WEST FROM THE SE CORNER OF SECTION 4, AND 5 FEET SOUTH AND 1970 FEET WEST FROM THE SAID SE CORNER OF SECTION 4 BOTH WITHIN THE SOUTH HALF OF THE SE SECTION 4 (PORTABLE PUMPS)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
15608	July 21, 1943	0.22	81.00	April 2 – October 31

**Instream Reach No. 2:** From the authorized point of diversions shown below to the confluence with Mackin Gulch:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
34 S	6 W	WM	4	SE SE	POD 1 – 65 FEET NORTH AND 60 FEET WEST FROM THE NE CORNER OF SECTION 9
34 S	6 W	WM	9	NW NE	POD 2 – 165 FEET SOUTH AND 2340 FEET WEST FROM THE NE CORNER OF SECTION 9

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
96295	1891	0.11	46.22	April 1 – October 31
96296	1891	0.47	198.00	April 1 – October 31

31. The proposed changes, as modified, would not result in enlargement of the right.
32. The proposed changes, as modified, would not result in injury to other water rights.
33. The amount and timing of the proposed instream flow, as modified, is allowable within the limits and use of the original water right.
34. The protection of flows, as modified, within the proposed reach is appropriate, considering:

- a) The instream water right begins at the recorded point of diversion;
  - b) The location of confluences with other streams downstream of the point of diversion;
  - c) There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - d) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
35. The existing instream water rights, established under ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency application process on Grave Creek are sufficient to protect the monthly quantities of water necessary for supporting aquatic life and anadromous and resident fish habitat, but are not always met. By replacing a portion of these instream water rights, any instream water right created as a result of this transfer will provide protection of stream flows identified as necessary for supporting aquatic life and anadromous and resident fish habitat under earlier priority dates.
36. By adding to other instream water rights, established pursuant to ORS 537.348 (instream transfer process and instream lease) and ORS 537.470 (allocation of conserved water process), located within the proposed reach, any new instream water right established by this transfer would provide protection for additional flows identified as necessary for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
37. During the period April 1 through October 31, any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to ORS 537.341 or ORS 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or ORS 537.470, unless otherwise specified in an order approving a new instream water right under these statutes.
38. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.

**Determination and Proposed Action**

The changes in character of use and place of use to instream use proposed in application T-13382 appear to be consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

*If Transfer Application T-13382 is approved, the final order will include the following:*

- 1. *The changes in character of use and place of use to instream use proposed in application T-13382 are approved.*



2. Water right certificates 15608, 96295, and 96296 are cancelled. New certificates confirming the instream water rights shall be issued.
3. New remaining right certificates will be issued describing those portions of Certificates 96295 and 96296 not affected by this transfer.
4. The instream water rights shall provide for the protection of streamflows as shown below and the quantities of water to be protected under the instream water rights are:

**Mackin Gulch, tributary to Grave Creek**

**Instream Reach:** From the authorized point of diversion shown below to the confluence with Grave Creek:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
34 S	6 W	WM	4	NE SE	MACKIN GULCH - 2100 FEET NORTH AND 750 FEET WEST FROM THE SE CORNER OF SECTION 4

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
15608	July 21, 1943	0.05	18.0	April 2 – October 31

**Grave Creek, tributary to Rogue River**

**Instream Reach No. 1:** From the authorized point of diversion shown below to the confluence with Mackin Gulch:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
34 S	6 W	WM	4	SW SE SE SE	GRAVE CREEK – BETWEEN A POINT 5 FEET SOUTH AND 650 FEET WEST FROM THE SE CORNER OF SECTION 4, AND 5 FEET SOUTH AND 1970 FEET WEST FROM THE SAID SE CORNER OF SECTION 4 BOTH WITHIN THE SOUTH HALF OF THE SE SECTION 4 (PORTABLE PUMPS)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
15608	July 21, 1943	0.22	81.00	April 2 – October 31

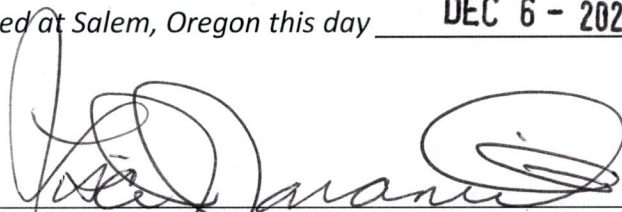
**Instream Reach No. 2:** From the authorized point of diversions shown below to the confluence with Mackin Gulch:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
34 S	6 W	WM	4	SE SE	POD 1 – 65 FEET NORTH AND 60 FEET WEST FROM THE NE CORNER OF SECTION 9
34 S	6 W	WM	9	NW NE	POD 2 – 165 FEET SOUTH AND 2340 FEET WEST FROM THE NE CORNER OF SECTION 9

<b>Certificate</b>	<b>Priority Date</b>	<b>Instream Rate (cfs)</b>	<b>Instream Volume (AF)</b>	<b>Period Protected Instream</b>
96295	1891	0.11	46.22	April 1 – October 31
96296	1891	0.47	198.00	April 1 – October 31

5. *Water rights upstream and downstream of the original points of diversion shall not be subject to regulation for flows in excess of the quantities to which these instream water rights are entitled at the original points of diversion.*
6. *Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion.*
7. *The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.*
8. *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 15608, 96295 and 96296 and any related decree.*
9. *The former places of use of the transferred water shall no longer receive water as part of these rights.*

Dated at Salem, Oregon this day DEC 6 - 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 Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-979-9872 or sarah.a.henderson@water.oregon.gov.

*Protests should be addressed to the attention of Water Rights Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.*

## **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



# 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](http://www.oregon.gov/owrd)

DATE DEC 6 - 2023

VIA CERTIFIED MAIL AND E-MAIL

**Applicant**

Bryan Long  
1775 Leland Road  
Wolf Creek, Oregon 97497

**Agent**

Scott Fein Water Rights  
600 Tyler Creek Road  
Ashland, Oregon 97520

SUBJECT: Instream Transfer Application T-13382

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve instream application T-13382. 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 Grants Pass Daily Courier 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 503-979-9872 or [Sarah.A.Henderson@water.oregon.gov](mailto:Sarah.A.Henderson@water.oregon.gov) if I may be of assistance.

Sincerely,



Sarah Henderson Kelly Starnes  
Flow Restoration Program Coordinator  
Transfer and Conservation Section

cc: Transfer Application file T-13382  
Scott C. Ceciliani, District 14 Watermaster (*via e-mail*)  
Jason Brandt, ODFW (*via e-mail*)  
Brian Creutzburg, DEQ (*via e-mail*)  
Adam Frederick, Water Right Caseworker (*App. G-18792*)

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