

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-14158, Wheeler County)	PROPOSING APPROVAL OF ADDITIONAL
)	POINTS OF DIVERSION AND PARTIAL
)	CANCELLATION OF A WATER RIGHT

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.

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 request voluntary cancellation.

Applicant

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

Findings of Fact

1. On January 24, 2023, BRIDGE CREEK RANCH, LLC, filed an application for additional points of diversion under Certificates 13593 and 96311. The Department assigned the application number T-14158.
2. Notice of the application for transfer was published on January 31, 2023, pursuant to OAR 690-380-4000. A timely comment was submitted to the Department in response to the notice. The issue raised by the comment focused primarily on concerns that:
 - a) The proposed new POD may allow use of water in excess of what has been allowed at the current POD.
3. The application states “if the transfer is approved, much of the existing infrastructure associated with the authorized Point of Diversion (POD) in Section 6 will be removed and the land on which it is located will be revegetated. Bridge Creek Ranch currently has an authorization from the Bureau of Land Management (BLM) to use the POD in Section 6, but that authorization expires on December 31, 2024. If this transfer is approved, then the

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.

Section 6 POD infrastructure, such as the concrete-box fish screen structure and two pipes, will be removed, leaving in place only the diversion structure on the streambank with a fish screen over the entrance. The land where the portion of the POD structure will be removed and will then be revegetated as directed by the BLM. The existing Section 6 POD will be used to irrigate a seed mix that will be planted on an 8 acre BLM field in Section 6, which will require initial irrigation until the perennial native plants are established. Thereafter, the BLM intends to lease the water rights for the 8 acres instream.”

4. The Department’s watermaster review indicates that Transfer Application T-14158 does not include the entirety of the acres authorized under Certificate 13593 for transfer. Because the application indicated that if the transfer is approved and completed, the BLM POD will be disconnected and as such there will be no POD to serve those acres. The watermaster requested the applicant submit a voluntary cancellation affidavit to the Department, cancelling the acres not associated with Bridge Creek Ranch’s points of diversion.
5. On June 26, 2023, the agent for the applicant submitted an affidavit for voluntary cancellation of a portion of Certificate 13593, as well as amended application pages and an amended map.
6. Transfer Application T-14158 proposes an additional point of diversion under Certificate 13593 and Certificate 96311, however, the application does not clearly describe the “from” and the “to” portions of the lands affected by the additional point of diversion for either certificate.
7. On October 18, 2023, the Department spoke with the agent for the applicant via phone. The agent for the applicant submitted amended application pages via email, satisfying the deficiency.
8. On November 15, 2023, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-14158 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 15, 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.
9. On December 12, 2023, the applicant requested to extend the date for completion of full beneficial use of the water to October 1, 2028.
10. The portion of the first right to be transferred is as follows:
 - Certificate:** 13593 in the name of BEN TAYLOR (confirmed by Bridge Creek Decree, recorded at Special Order Volume 12, Page 388)
 - Use:** IRRIGATION OF 147.1 ACRES AND DOMESTIC
 - Priority Date:** 1868
 - Rate:** 3.68 cubic feet per second (cfs) before June 15 and 1.84 cfs after June 15

Limit/Duty: The amount of water to which such right is entitled; for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed one-fortieth of one cubic foot per second per acre of land irrigated before June 15, and one-eightieth of one cubic foot per second per acre after June 15, during the irrigation season from March 1 to October 1 of each year, measured at the point of diversion from the stream.

Period of Use: MARCH 1 to OCTOBER 1

Source: BRIDGE CREEK

Authorized Place of Use:

IRRIGATION AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	20 E	WM	24	SE SW	13.2
10 S	20 E	WM	25	NW NE	4
10 S	20 E	WM	25	SW NE	10.6
10 S	20 E	WM	25	SE NE	5.2
10 S	20 E	WM	25	NE NW	18.3
10 S	20 E	WM	25	SE NW	13.3
10 S	20 E	WM	25	NE SW	1.5
10 S	20 E	WM	25	NE SE	14.6
10 S	20 E	WM	25	NW SE	23.8
10 S	20 E	WM	25	SW SE	2.5
10 S	20 E	WM	25	SE SE	21.6
10 S	20 E	WM	36	NE NE	0.2
10 S	21 E	WM	30	SW SW	5.5
10 S	21 E	WM	31	NE NW	3.3
10 S	21 E	WM	31	NW NW	9.5
Total					147.1

11. Certificate 13593 does not describe the location of the authorized point of diversion. The applicant has submitted information that the authorized point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	21 E	WM	6	NE NE	(SUTTON DITCH) - 590 FEET SOUTH AND 2160 FEET EAST FROM THE N $\frac{1}{4}$ CORNER OF SECTION 6

12. Transfer Application T-14158 proposes an additional point of diversion approximately 0.28 mile downstream from the authorized point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
10 S	21 E	WM	31	SE SE	3600	NEW POD – 160 FEET NORTH AND 1850 FEET EAST FROM THE SOUTH 1/4 CORNER OF SECTION 31

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

Certificate: 96311 in the name of U.S. BUREAU OF LAND MANAGEMENT confirmed by Bridge Creek Decree, recorded at Special Order Volume 12, Page 388)
Use: IRRIGATION OF 43.3 ACRES AND DOMESTIC
Priority Date: 1868
Rate: 1.08 cubic feet per second (cfs) before June 15 and 0.54 cfs after June 15
Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed one-fortieth of one cubic foot per second per acre of land irrigated before June 15, and one-eighthieth of one cubic foot per second per acre after June 15, during the irrigation season from March 1 to October 1 of each year, measured at the point of diversion from the stream.
Period of Use: MARCH 1 to OCTOBER 1
Source: BRIDGE CREEK, tributary to JOHN DAY RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
11 S	21 E	WM	6	NE NE	ADDITIONAL POD - 590 FEET SOUTH AND 2160 FEET EAST FROM THE N1/4 CORNER OF SECTION 6
11 S	21 E	WM	9	NW NW	ADDITIONAL POD - 960 FEET SOUTH AND 780 FEET EAST FROM THE NW CORNER OF SECTION 9
11 S	21 E	WM	9	NE SW	ORIGINAL POD – LAST CHANCE OR CARROL DITCHES - 1650 FEET NORTH AND 80 FEET WEST FROM THE S1/4 CORNER OF SECTION 9

Authorized Place of Use:

IRRIGATION AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	21 E	WM	31	SW NE	11.0
10 S	21 E	WM	31	NW SE	22.8
10 S	21 E	WM	31	SW SE	0.1
10 S	21 E	WM	31	SE SE	9.4
Total					43.3

14. Transfer Application T-14158 proposes an additional point of diversion with approximate distances downstream from the authorized points of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances	Distance from Authorized POD (in miles)
10 S	21 E	WM	31	SE SE	3600	NEW POD – 160 FEET NORTH AND 1850 FEET EAST FROM THE SOUTH 1/4 CORNER OF SECTION 31	ADDITIONAL POD - 0.16 mi ADDITIONAL POD - 1.73 mi ORIGINAL POD - 2.3 mi

15. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and

that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

Transfer Review Criteria [OAR 690-380-0100(14), 690-380-4010(2) and 690-380-2110(2)]

16. 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.
17. A water delivery system sufficient to use the full amount of water allowed under the existing rights was present within the five-year period prior to submittal of Transfer Application T-14158.
18. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
19. The proposed point of diversion diverts water from the same source of surface water as the authorized points of diversion, as required by OAR 690-380-2110(2).
20. The proposed changes, as conditioned, would not result in enlargement of the rights.
21. The proposed changes, as conditioned, would not result in injury to other existing water rights.

Partial Cancellation of a Water Right

22. The portion of the right to be cancelled is as follows:

Certificate: 13593 in the name of BEN TAYLOR (confirmed by Bridge Creek Decree, recorded at Special Order Volume 12, Page 388)

Use: IRRIGATION OF 12.0 ACRES

Priority Date: 1868

Rate: 0.3 cubic foot per second (cfs) before June 15 and 0.15 cfs after June 15

Limit/Duty: The amount of water to which such right is entitled; for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed one-fortieth of one cubic foot per second per acre of land irrigated before June 15, and one-eightieth of one cubic foot per second per acre after June 15, during the irrigation season from March 1 to October 1 of each year, measured at the point of diversion from the stream.

Period of Use: MARCH 1 to OCTOBER 1

Source: BRIDGE CREEK

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	20 E	WM	25	SE NE	0.9
10 S	20 E	WM	25	NE NW	0.2

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	20 E	WM	25	NE SW	1.9
10 S	20 E	WM	25	NW SE	2.0
10 S	20 E	WM	25	SW SE	1.3
10 S	20 E	WM	25	SE SE	0.7
10 S	21 E	WM	30	SW SW	4.9
10 S	21 E	WM	31	NE NW	0.1
Total					12.0

Determination and Proposed Action

The additional points of diversion proposed in Transfer Application T-14158 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portion of the right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved, and the abandoned portion of the right will be cancelled.

If Transfer Application T-14158 is approved, the final order will include the following:

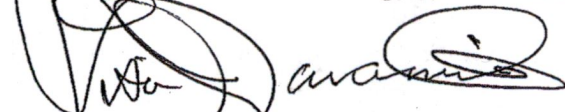
1. *The additional points of diversion proposed in Transfer Application T-14158 are approved. The portion of the right that has been abandoned is cancelled.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in Certificates 13593 and 96311, and any related decree.*
3. *Approval of this transfer application does not constitute nor grant legal access onto or through another person’s property for purposes of accessing the new points of diversion.*
4. *Water right Certificate 13593 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.*
5. *Water right Certificate 96311 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
6. *Under water right Certificate 13593, the quantity of water diverted at the new additional point of diversion (NEW POD) together with that diverted at the original point of diversion (POD), shall not exceed the quantity of water lawfully available at the original point of diversion (POD).*
7. *Under water right Certificate 96311, the quantity of water diverted at the new additional point of diversion (NEW POD) together with that diverted at the original points of diversion (ORIGINAL POD, ADDITIONAL POD, ADDITIONAL POD), shall not exceed the quantity of water lawfully available at the original point of diversion (ORIGINAL POD, ADDITIONAL POD, ADDITIONAL POD).*

8. *Water shall be acquired from the same source of surface water as the original points of diversion.*
9. *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 diversion (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.*
10. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

11. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2028**. 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.*
12. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on **JAN 19 2024**



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

This Preliminary Determination was prepared by Arla L Davis. If you have questions about the information in this document, you may reach me at 503-979-3129 or Arla.L.Davis@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.



Oregon

Tina Kotek, Governor

Water Resources Department

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725 Summer St NE, Suite A
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Phone 503 986-0900
Fax 503 986-0904
www.oregon.gov/owrd

January 19, 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-14158

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-14158. 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 Bend Bulletin 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 don't hesitate to contact me at 503-979-3129 or arla.l.davis@water.oregon.gov, if I may be of assistance.

Sincerely,

Arla L Davis

Arla L Davis
Transfer Specialist
Transfer and Conservation Section

cc: T-14158
Kenneth C. Thiemann, District 21 Watermaster (*via e-mail*)
Elizabeth Howard, Lindsay Thane, Agents for the applicant (*via e-mail*)

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