

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-14204, Union County	)	PROPOSING APPROVAL A CHANGE IN
	)	PLACE OF USE AND A CHANGE IN
	)	CHARACTER OF USE

**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.

**Applicant**

SPV HOT LAKES ORGANICS LLLP  
ATTN: STEVE BRUERE  
12119 STRATFORD DR, SUITE B  
CLIVE, IA 50325

**Findings of Fact**

1. On March 27, 2023, SPV HOT LAKES ORGANICS LLP filed an application to change the place of use and to change the character of use under Certificate 46514. The Department assigned the application number T-14204.
2. Notice of the application for transfer was published on April 25, 2023, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 3, 2023, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-14204 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 2, 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 right to be transferred is as follows:

**Certificate:** 46514 in the name of DAVID C. BAUM (perfected under Permit G-5804)

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.
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**Use:** IRRIGATION OF 79.9 ACRES AND SUPPLEMENTAL IRRIGATION OF 98.2 ACRES

**Priority Date:** OCTOBER 8, 1973

**Rate:** 2.23 CUBIC FEET 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 (AF) per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL, a tributary of CATHERINE CREEK

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	39 E	WM	10	NW SE	1980 FEET NORTH FROM THE S 1/4 CORNER OF SECTION 10

**Authorized Place of Use:**

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	39 E	WM	10	SW NE	9.7
4 S	39 E	WM	10	SE SW	6.8
4 S	39 E	WM	10	NW SE	31.9
4 S	39 E	WM	10	SW SE	31.5
TOTAL					79.9

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	39 E	WM	10	SE NW	37.0
4 S	39 E	WM	10	NE SW	40.0
4 S	39 E	WM	10	SE SW	21.2
TOTAL					98.2

5. Transfer Application T-14204 proposes to change the place of use of the right to:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	39 E	WM	10	SW NE	7.0
4 S	39 E	WM	10	SE SW	6.8
4 S	39 E	WM	10	NW SE	34.6
4 S	39 E	WM	10	SW SE	31.5
TOTAL					79.9

6. Transfer Application T-14204 also proposes to change the character of use on 98.2 acres from supplemental irrigation to primary irrigation.

7. Therefore, the supplemental irrigation portion of the right will receive the following duty limit for primary irrigation:



**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-HUNDRETH 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 1-acre feet per acre for each acre irrigated during the irrigation season of each year.

***Transfer Review Criteria [OAR 690-380-0100(14), 690-380-4010(2), 690-380-2110(2) and OAR 690-380-2320]***

8. Water has been used within the last five years prior to the submittal of Transfer Application T-14204 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 water delivery system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-14204.
10. The water right is subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
11. A change in character of use from supplemental use to primary use will be allowed only to the extent the applicant can establish the quantity of water historically used under the supplemental water right per OAR 690-380-2320. The applicant has submitted historic data that indicates the quantity of water used for supplemental use has been 98.2 acre-feet (98.2 acres X 1.0 acre-foot per acre). The proposed changes, as conditioned, would not result in enlargement of the right.
12. The proposed change, as conditioned, would not result in injury to other existing water rights.
13. All other application requirements are met.

***Partial Cancellation of a Water Right***

14. On March 27, 2023, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from SPV HOT LAKES ORGANICS LLP. The portion of the right to be cancelled is as follows:

**Certificate:** 81467 in the name of AMALGAMATED SUGAR CO. (confirmed by Grande Ronde River, Consolidated decree)

**Use:** IRRIGATION of 95.0 ACRES

**Priority Dates:** NOVEMBER 1903

**Limit/Duty:** The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed ONE-FORTIETH 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 in any irrigation season. The right to the use of water for the above purpose is restricted to beneficial use on the lands or place of use described.

**Source:** CATHERINE CREEK, tributary of the GRANDE RONDE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	SURVEY COORDINATES
4 S	39 E	WM	15	SE NE	SUGAR BEET IRR CO DITCH

**Authorized Place of Use to be Cancelled:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	39 E	WM	10	SE NW	40.0
4 S	39 E	WM	10	NE SW	40.0
4 S	39 E	WM	10	SE SW	15.0
TOTAL					95.0

- On March 27, 2023, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from SPV HOT LAKES ORGANICS LLLP. The portion of the right to be cancelled is as follows:

**Certificate:** 6411 in the name of A. J. KNIGHT (confirmed by Grande Ronde River, Consolidated decree)

**Use:** IRRIGATION of 8.0 ACRES

**Priority Date:** JUNE 1903

**Rate:** 0.2 CUBIC FOOT PER SECOND

**Limit/Duty:** Three-acre feet per acre in any irrigation season, diverted at a rate not to exceed ONE-FORTIETH of a cubic foot per second

**Source:** CATHERINE CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
<i>Not described in certificate</i>					

**Authorized Place of Use to be Cancelled:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	39 E	WM	10	SE SW	8.0

**Determination and Proposed Action**

The change in place of use and change in character of use proposed in Transfer Application T-14204 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned rights will be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved, and the abandoned rights will be cancelled.



*If Transfer Application T-14204 is approved, the final order will include the following:*

- 1. The change in place of use and change in character of use proposed in Transfer Application T-14204 are approved. The portion of the rights that have been abandoned are 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 46514 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 place of use.*
- 4. Water right Certificates 46514, 6411, and 81467 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer and cancellations.*
- 5. The amount of water used for the proposed primary irrigation use under Certificate 46514 shall be limited to a rate of diversion of not to exceed 1.2 cubic feet per second and shall be further limited to a total quantity diverted of not to exceed 98.2 acre-feet during the irrigation season of each year.*
- 6. The former place of use of the transferred right shall no longer receive water under the right.*
- 7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2025**. 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.*
- 8. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on **MAR 1 - 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 Dante J. Luongo. If you have questions about the information in this document, you may reach me at 971-304-5006 or [dante.j.luongo@water.oregon.gov](mailto:dante.j.luongo@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

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)

February 26, 2024

VIA CERTIFIED MAIL AND E-MAIL

### **Applicant**

SPV HOT LAKES ORGANICS LLP  
ATTN: STEVE BRUERE  
12119 STRATFORD DR SUITE B  
CLIVE, IA 50325

SUBJECT: Water Right Transfer Application T-14204

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-14204. 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 La Grande Observer 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 971 304-5006 or [Dante.J.Luongo@water.oregon.gov](mailto:Dante.J.Luongo@water.oregon.gov), if I may be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Luongo', with a long, sweeping horizontal line extending to the right.

Dante Luongo  
Transfer Specialist  
Transfer and Conservation Section

cc: T-14204  
Shad L. Hattan, District 6 Watermaster (*via e-mail*)  
Jon S. Travis, Agent for the applicant (*via e-mail*)