

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13798, Umatilla County)	PROPOSING APPROVAL OF ADDITIONAL
)	POINTS OF APPROPRIATION

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

Stuart Byerley
3074 McDonald Rd.
Touchet, WA 99360

Findings of Fact

1. On August 10, 2021, Stuart Byerley filed an application for additional points of appropriation under Certificates 39853, 39855, 40322, and 54527. The Department assigned the application number T-13798.
2. Notice of the application for transfer was published on September 7, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The transfer application did not include all of the necessary fees at the initial intake. The Department contacted the applicant’s agent on December 2, 2022 requesting additional fees to be submitted.
4. On December 22, 2022, the applicant provided the remainder of the fees to the Department, completing the deficiency.
5. On July 10, 2023, the applicant’s agent was also notified that Table 2 for Certificate 54527, did not match the proposed “from” lands being changed on the transfer application map.
6. On July 11, 2023, the applicant’s agent submitted a revised transfer application map for Certificate 54527.

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.

7. On September 14, 2023, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13798 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 14, 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.

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

Certificate: 39853 in the name of JOHN L. GEYER (perfected under Permit G-406)
Use: IRRIGATION of 77.57 ACRES
Priority Date: DECEMBER 10, 1956
Rate: 0.97 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: GEYER RANCH WELL 3 in the PINE CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	34 E	WM	19	NW NW	GEYER RANCH WELL 3 - 670 FEET SOUTH AND 1220 FEET EAST FROM THE NW CORNER OF SECTION 19

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	34 E	WM	19	SW NW	2.30
6 N	34 E	WM	19	SE NW	2.40
6 N	34 E	WM	19	NE SW	36.40
6 N	34 E	WM	19	NW SW	36.47
Total					77.57

9. Transfer Application T-13798 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from authorized point of appropriation
6 N	34 E	WM	18	SW SW	APOA 5 – 1075 FEET NORTH AND 685 FEET EAST FROM THE NW CORNER OF SECTION 19, T6N, R34E, WM	1800 FEET FROM GEYER RANCH WELL 3
6 N	34 E	WM	18	SE SW	APOA 1 – 790 FEET NORTH AND 1460 FEET EAST FROM THE NW CORNER OF SECTION 19	1500 FEET FROM GEYER RANCH WELL 3

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from authorized point of appropriation
6 N	34 E	WM	19	SE NW	APOA 6 – 1800 FEET SOUTH AND 2635 FEET EAST FROM THE NW CORNER OF SECTION 19	1850 FEET FROM GEYER RANCH WELL 3

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

Certificate: 39855 in the name of JOHN L. GEYER (perfected under Permit U-568)

Use: IRRIGATION of 217.27 ACRES

Priority Date: APRIL 1, 1953

Rate: 1.656 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 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 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: GEYER RANCH WELL No. 1 in the PINE CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	34 E	WM	18	SE SW	GEYER RANCH WELL No. 1 – 790 FEET NORTH AND 1460 FEET EAST FROM THE SW CORNER OF SECTION 18

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	34 E	WM	18	SW SW	30.00
6 N	34 E	WM	18	SE SW	31.97
6 N	34 E	WM	19	NE NW	40.00
6 N	34 E	WM	19	NW NW	40.00
6 N	34 E	WM	19	SW NW	37.70
6 N	34 E	WM	19	SE NW	37.60
Total					217.27

11. Transfer Application T-13798 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from authorized point of appropriation
6 N	34 E	WM	18	SW SW	APOA 5 - 1075 FEET NORTH AND 685 FEET EAST FROM THE NW CORNER OF SECTION 19	680 FEET FROM GEYER RANCH WELL No. 1
6 N	34 E	WM	19	NW NW	APOA 3 – 670 FEET SOUTH AND 1220 FEET EAST FROM	1620 FEET FROM GEYER RANCH WELL No. 1

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from authorized point of appropriation
					THE NW CORNER OF SECTION 19	
6 N	34 E	WM	19	SE NW	APOA 6 – 1800 FEET SOUTH AND 2635 FEET EAST FROM THE NW CORNER OF SECTION 19	3050 FEET FROM GEYER RANCH WELL No. 1

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

Certificate: 40322 in the name of JOHN L. GEYER (perfected under Permit G-3107)

Use: IRRIGATION of 40.0 ACRES and SUPPLEMENTAL IRRIGATION of 294.84 ACRES

Priority Date: FEBRUARY 7, 1966

Rate: 2.48 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, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: WELLS 1 AND 3, in the PINE CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	34 E	WM	18	SE SW	WELL NO. 1 - 790 FEET NORTH AND 1460 FEET EAST FROM THE NW CORNER OF SECTION 19
6 N	34 E	WM	19	NW NW	WELL NO. 3 - 670 FEET SOUTH AND 1220 FEET EAST FROM THE NW CORNER OF SECTION 19

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized Well
6 N	34 E	WM	19	NE SW	3.60	
6 N	34 E	WM	19	NW SW	3.53	
6 N	34 E	WM	19	SW SW	16.47	
6 N	34 E	WM	19	SE SW	16.40	
Total					40.00	

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Authorized Well
6 N	34 E	WM	18	SW SW	30.00	3
6 N	34 E	WM	18	SE SW	31.97	3
6 N	34 E	WM	19	NE NW	40.00	3

6 N	34 E	WM	19	NW NW	40.00	3
6 N	34 E	WM	19	SW NW	2.30	1
6 N	34 E	WM	19	SW NW	37.70	3
6 N	34 E	WM	19	SE NW	2.40	1
6 N	34 E	WM	19	SE NW	37.60	3
6 N	34 E	WM	19	NE SW	36.40	3
6 N	34 E	WM	19	NW SW	36.47	3
TOTAL					294.84	

13. Transfer Application T-13798 proposes additional points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from authorized points of appropriation	
						Well No. 1	Well No. 3
6 N	34 E	WM	18	SW SW	APOA 5 - 1075 FEET NORTH AND 685 FEET EAST FROM THE NW CORNER OF SECTION 19	680 FEET	1680 FEET
6 N	34 E	WM	19	SE NW	APOA 6 - 1800 FEET SOUTH AND 2635 FEET EAST FROM THE NW CORNER OF SECTION 19	1980 FEET	3060 FEET

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

Certificate: 54527 in the name of JOHN L. GEYER (perfected under Permit G-6366)

Use: IRRIGATION of 47.0 ACRES

Priority Date: MAY 7, 1974

Rate: 0.58 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: WELL 1 and WELL 3 in the PINE CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	34 E	WM	18	SE SW	WELL 1 - 790 FEET NORTH AND 1460 FEET EAST FROM THE NW CORNER OF SECTION 19
6 N	34 E	WM	19	NW NW	WELL 3 - 670 FEET SOUTH AND 1220 FEET EAST FROM THE NW CORNER OF SECTION 19

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	34 E	WM	19	SW SW	23.5
6 N	34 E	WM	19	SE SW	23.5
TOTAL					47.0

15. Transfer Application T-13798 proposes additional points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from authorized points of appropriation	
						Well No. 1	Well No. 3
6 N	34 E	WM	18	SW SW	APOA 5 - 1075 FEET NORTH AND 685 FEET EAST FROM THE NW CORNER OF SECTION 19	680 FEET	1680 FEET
6 N	34 E	WM	19	SE NW	APOA 6 - 1800 FEET SOUTH AND 2635 FEET EAST FROM THE NW CORNER OF SECTION 19	1980 FEET	3060 FEET

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

16. Water has been used within the last five years prior to the submittal of Transfer Application T-13798 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-13798. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
18. The proposed points of appropriation develop groundwater from the same aquifer as the authorized points of appropriation, as required by OAR 690-380-2110(2).
19. The proposed change, as conditioned, would not result in enlargement of the right.
20. The proposed change, as conditioned, would not result in injury to other water rights.
21. All other application requirements are met.

Determination and Proposed Action

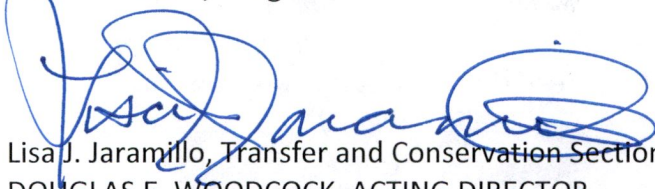
The additional points of appropriation proposed in Transfer Application T-13798 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-13798 is approved, the final order will include the following:

- 1. The additional points of appropriation proposed in Transfer Application T-13798 are approved.*
- 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 39853, 39855, 40322, 54527, and any related decree.*
- 3. Water right Certificates 39853, 39855, 40322, and 54527 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
- 4. Under Certificate 39853, the quantity of water diverted at the additional points of appropriation (APOA 1, 5, and 6), together with that diverted at the original point of appropriation (Geyer Ranch Well 3), shall not exceed the quantity of water lawfully available at the original point of appropriation (Geyer Ranch Well 3).*
- 5. Under Certificate 39855, the quantity of water diverted at the additional points of appropriation (APOA 3 and 5), together with that diverted at the original point of appropriation (Geyer Ranch Well 1), shall not exceed the quantity of water lawfully available at the original point of appropriation (Geyer Ranch Well 1).*
- 6. Under Certificate 40322, the quantity of water diverted at the additional points of appropriation (APOA 5 and 6), together with that diverted at the original points of appropriation (Wells 1 and 3), shall not exceed the quantity of water lawfully available at the original points of appropriation (Wells 1 and 3).*
- 7. Under Certificate 54527, the quantity of water diverted at the additional points of appropriation (APOA 5 and 6), together with that diverted at the original points of appropriation (Wells 1 and 3), shall not exceed the quantity of water lawfully available at the original points of appropriation (Wells 1 and 3).*
- 8. Water shall be acquired from the same aquifer water source as the original points of appropriation.*
- 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 appropriation (new and existing).*
 - b) The water user shall maintain the meters or measuring devices in good working order.*

- c) *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
10. *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.*
11. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on



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

This Preliminary Determination was prepared by Dante 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.

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.

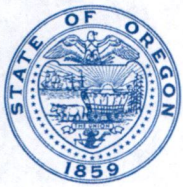
You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions, or public or private organizations are represented by an attorney. However, consistent 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 Service Members: Active-duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number for the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <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

March 21, 2024

VIA CERTIFIED MAIL AND E-MAIL

Applicant

STUART BYERLEY

3074 MCDONALD ROAD

TOUCHET, WA 99360

SUBJECT: Water Right Transfer Application T-13798

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13798. 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 East Oregonian 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, if I may be of assistance.

Sincerely,



Dante Luongo
Transfer Specialist
Transfer and Conservation Section

cc: T-13798
Luke C. Martin, District 23 Watermaster (*via e-mail*)
Bill Neve, Agent for the applicant (*via e-mail*)

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