

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-14317, Wheeler County	)	PROPOSING APPROVAL OF ADDITIONAL
	)	POINTS OF DIVERSION

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

JOHN WEISNER
CONTENTION RANCH, LLC
60285 SUNSET VIEW DR
BEND, OR 97702

Findings of Fact

1. On August 21, 2023, JOHN WEISNER/ CONTENTION RANCH, LLC filed an application for additional points of diversion and to change the places of use under Certificates 87734 and 87738, and for an additional point of diversion under Certificate 87736. The Department assigned the application number T-14317.
2. Notice of the application for transfer was published on September 12, 2023, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 2, 2024, the Department sent a copy of the draft Preliminary Determination proposing to deny Transfer Application T-14317 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of June 1, 2024, for the applicants to respond.
4. On May 31, 2024, the applicant provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer and requested additional time to resolve the injury and denial issues.

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.

5. On August 8, 2024, the applicant's agent provided amended pages to the application and map, removing the change in place of use for Certificates 87734 and 87738, resolving the injury and denial issue. The applicant's agent also requested that the Department proceed with issuance of a Preliminary Determination to approve

6. The first right to be transferred is as follows:

Certificate: 87734 in the name of GIOTTONINI FAMILY TRUST and LOUIS R. AND MARY ANN GIOTTONINI, TRUSTEES (confirmed by John Day River (F) Decree)

Use: IRRIGATION OF 56.1 ACRES

Priority Date: 1868

Limit/Duty: The amount of water to which this right is entitled, for the purposes aforesaid, is limited to an amount actually used beneficially, and shall not exceed ONE-FORTIETH of one cubic foot per second (cfs) per acre irrigated to June 1 and ONE-EIGHTIETH of one cfs per acre thereafter; further limited to ONE acre-foot per calendar month to June 1 and FOUR acre-feet per acre during the irrigation season of April 1 to September 30, measured at the point of diversion.

Source: ROWE CREEK and SPRINGS in the NW ¼ SE ¼, Section 11 NW ¼ SW ¼ Section 22, tributaries of the JOHN DAY RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	21 E	WM	22	NE SW	HISTORIC POD #1 - 50 FEET SOUTH AND 1590 FEET EAST FROM THE W1/4 CORNER OF SECTION 22
9 S	21 E	WM	22	SE NW	HISTORIC POD #2 - 310 FEET NORTH AND 1530 FEET EAST FROM THE W1/4 CORNER OF SECTION 22

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	21 E	WM	22	NW NW	6.0
9 S	21 E	WM	22	SW NW	25.7
9 S	21 E	WM	22	NW SW	24.4
TOTAL					56.1

7. Transfer Application T-14317 proposes an additional point of diversion located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from the Authorized Points of Diversion
9 S	21 E	WM	22	NE SW	POD #3 - 250 FEET SOUTH AND 1630 FEET EAST FROM THE W1/4 CORNER OF SECTION 22	POD 1 - 130 FT DOWNSTREAM POD 2 - 500 FT DOWNSTREAM

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

Certificate: 87736 in the name of GIOTTONINI FAMILY TRUST and LOUIS R. AND MARY ANN GIOTTONINI, TRUSTEES (perfected under Permit S-18275)

Use: SUPPLEMENTAL IRRIGATION OF 106.2 ACRES

Priority Date: APRIL 8, 1947

Rate: 153.85 ACRE-FEET FROM THE RESERVOIR

Limit/Duty: The amount of water to which this right is entitled and is limited to an amount actually used beneficially, and shall not be limited to a diversion of not to exceed 1.0 acre-foot per acre for each acre irrigated during any month prior to June 1st and shall be further limited to a total diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of April 1st to September 30th of each year from direct flow and storage from reservoir constructed under permit No. R-30 and further limited to the use of stored water only on lands described supplemental.

Source: ROWE CREEK AND ROWE CREEK RESERVOIR, constructed under Permit No. R-930, tributary of the JOHN DAY RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	21 E	WM	11	SE NW	RESERVOIR - 3000 FEET NORTH AND 1840 FEET EAST FROM THE NE CORNER OF SECTION 15
9 S	21 E	WM	22	NE SW	HISTORIC POD #1 - 50 FEET SOUTH AND 1590 FEET EAST FROM THE W1/4 CORNER OF SECTION 22
9 S	21 E	WM	22	SE NW	HISTORIC POD #2 - 310 FEET NORTH AND 1530 FEET EAST FROM THE W1/4 CORNER OF SECTION 22

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	21 E	WM	15	SW SE	2.6
9 S	21 E	WM	22	NW NE	9.2
9 S	21 E	WM	22	NE NW	22.6
9 S	21 E	WM	22	NW NW	6.0
9 S	21 E	WM	22	SW NW	25.7
9 S	21 E	WM	22	SE NW	15.7
9 S	21 E	WM	22	NW SW	24.4
TOTAL					106.2

9. Transfer Application T-14317 proposes an additional point of diversion located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from the Authorized Points of Diversion
9 S	21 E	WM	22	NE SW	POD #3 - 250 FEET SOUTH AND 1630 FEET EAST FROM THE W1/4 CORNER OF SECTION 22	POD 1 - 130 FT DOWNSTREAM POD 2 - 500 FT DOWNSTREAM RESERVOIR - 12,400 FT DOWNSTREAM

10. The third right to be transferred is as follows:

Certificate: 87738 in the name of GIOTTONINI FAMILY TRUST; LOUIS R. AND MARY ANN GIOTTONINI, TRUSTEES (confirmed by John Day River (F) Decree)

Use: IRRIGATION OF 50.1 ACRES

Priority Date: 1883

Limit/Duty: The amount of water to which this right is entitled, for the purposes aforesaid, is limited to an amount actually used beneficially, and shall not exceed ONE-FORTIETH of one cubic foot per second (cfs) per acre irrigated to June 1 and ONE-EIGHTIETH of one CFS per acre thereafter; further limited to 1.0 acre-foot per calendar month to June 1 and 4.0 acre-feet per acre during the irrigation season of April 1 to September 30, measured at the point of diversion.

Source: ROWE CREEK, a tributary of the JOHN DAY RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	21 E	WM	22	NE SW	HISTORIC POD #1 - 50 FEET SOUTH AND 1590 FEET EAST FROM THE W1/4 CORNER OF SECTION 22
9 S	21 E	WM	22	SE NW	HISTORIC POD #2 - 310 FEET NORTH AND 1530 FEET EAST FROM THE W1/4 CORNER OF SECTION 22

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	21 E	WM	15	SW SE	2.6
9 S	21 E	WM	22	NW NE	9.2
9 S	21 E	WM	22	NE NW	22.6
9 S	21 E	WM	22	SE NW	15.7
TOTAL					50.1

11. Transfer Application T-14317 proposes an additional point of diversion located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from the Authorized Points of Diversion
9 S	21 E	WM	22	NE SW	POD #3 - 250 FEET SOUTH AND 1630 FEET EAST FROM THE W1/4 CORNER OF SECTION 22	POD 1 - 130 FT DOWNSTREAM POD 2 - 500 FT DOWNSTREAM

12. 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)]

13. Water has been used within the five-year period prior to submittal of Transfer Application T-14317 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.

14. 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-14317.
15. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
16. The proposed additional points of diversion divert water from the same source of surface water as the authorized points of diversion, as required by OAR 690-380-2110(2).
17. The proposed changes, as conditioned, would not result in enlargement of the rights.
18. The proposed changes, as conditioned, would not result in injury of other rights.
19. All other requirements are met.

Determination and Proposed Action

The additional points of diversion proposed in Transfer Application T-14317 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-14317 is approved, the final order will include the following:

1. *The additional points of diversion proposed in Transfer Application T-14317 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 87734, 87736, 87738, 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 additional points of diversion.*
4. *Water right Certificates 87734, 87736, and 87738 are cancelled. A new certificate will be issued describing that portion of Certificate 87736 not affected by this transfer.*
5. *For Certificate 87734, the quantity of water diverted at the new additional point of diversion (POD #3), together with that diverted at the original points of diversion (Historic POD #1 and Historic POD #2), shall not exceed the quantity of water lawfully available at the original points of diversion (Historic POD #1 and Historic POD #2).*
6. *For Certificate 87736, the quantity of water diverted at the new additional point of diversion (POD #3), together with that diverted at the original point of diversion (Reservoir, Historic POD #1 and Historic POD #2), shall not exceed the quantity of water lawfully available at the original points of diversion (Reservoir, Historic POD #1 and Historic POD #2).*

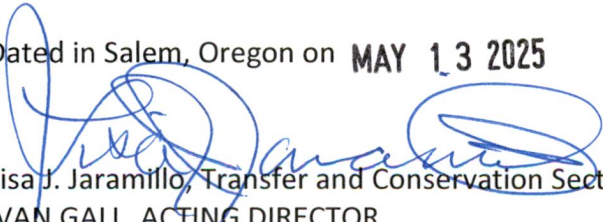
7. *For Certificate 87738, the quantity of water diverted at the new additional point of diversion (POD #3), together with that diverted at the original points of diversion (Historic POD #1 and Historic POD #2), shall not exceed the quantity of water lawfully available at the original points of diversion (Historic POD #1 and Historic POD #2).*
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 a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.*
11. *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.

12. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2026**. 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,*

13. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on **MAY 13 2025**


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
IVAN GALL, 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 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

May 13, 2025

VIA CERTIFIED MAIL AND E-MAIL

JOHN WEISNER
CONTENTION RANCH, LLC
60285 SUNSET VIEW DR
BEND, OR 97702

SUBJECT: Water Right Transfer Application T-14317

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-14317. 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: Transfer Application file T-14317
Kenneth C. Thiemann, District 21 Watermaster (*via e-mail*)
John A. Short, Agent for the applicant (*via e-mail*)