

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-14094, Baker County)	PROPOSING APPROVAL OF A CHANGE IN
)	POINT OF DIVERSION, AN ADDITIONAL
)	POINT OF DIVERSION, A CHANGE IN
)	PLACE OF USE, AND PARTIAL
)	CANCELLATION OF A WATER RIGHT
)	CERTIFICATE

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

KRESTA DAVIS
IDAHO POWER COMPANY
PO BOX 70
BOISE, ID 83707

Findings of Fact

1. On September 21, 2022, KRESTA DAVIS, IDAHO POWER COMPANY, filed an application for an additional point of diversion, to change the point of diversion, and to change the place of use under Certificate 72609. The Department assigned the application number T-14094.
2. Notice of the application for transfer was published on September 27, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 1, 2024, the Department contacted the applicant's agent via email regarding deficiencies in the application and issues found during the initial review of Transfer Application T-14094. The deficiencies included an incomplete Land Use Form, the validity of the evidence of use as the application indicates that the applicant has been using a point of diversion not authorized under Certificate 72609, and pursuant to OAR 690-380-0100(2)(c),

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.

a finding of enlargement as Transfer Application 14094 proposes diverting water from the Snake River (identified on Transfer Application T-14094 as North Intake and Park Intake). The authorized source of water under Certificate 72609 is Pine Creek (identified on Transfer Application T-14094 as J.A. Vaughn Ditch). A finding of enlargement was not included in the District 8 Watermaster's review.

4. On February 28, 2024, the Department's District 8 Watermaster and the East Region Manager, met with the applicant's agent to address the enlargement issue. Both the Watermaster and Region Manager agree that there would not be a finding of enlargement under Transfer Application T-14094. Idaho Power runs and maintains a gaging station on Pine Creek near Oxbow (gage # 13290190), which allows the Department to measure the amount of water that Pine Creek is contributing to the Snake River. The intakes for the Park Intake (Snake River) are below the confluence of Pine Creek.
5. The Department requires that the applicant installs flow meters on both intakes. This will allow the Department to monitor both the gaging station and flow meters, to ensure more water is not being diverted than the amount of water Pine Creek is adding to the Snake River, and avoiding the enlargement issue. The watermaster reviewed the historical data during the later summer months, and the average amount of water being added to the Snake River from Pine Creek is always equal to approximately 0.54 cubic foot per second (CFS). Low flows for Pine Creek consisted of 28.5 CFS in 2020, 17.5 CFS in 2021, 27.5 CFS in 2022, and 25 CFS in 2023.
6. On March 20, 2024, the applicant's agent submitted an amended Land Use Form, amended application pages and an amended application map.
7. On March 17, 2025, the Department contacted the applicant's agent requesting additional information on the amended application pages and maps, previously submitted on March 20, 2024.
8. On April 1, 2025, the applicant's agent submitted additional amended application pages and a map, satisfying the deficiency.
9. On April 25, 2025, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-14057 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 25, 2025, 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.
10. The right to be transferred is as follows:

Certificate: 72609 in the name of SAM AKLIN (perfected under Permit S-1756)
Use: IRRIGATION OF 22.02 ACRES and DOMESTIC USE
Priority Date: SEPTEMBER 11, 1913
Rate: 0.30 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed ONE-EIGHTIETH of one cubic foot per second for each acre irrigated, or its equivalent in case of rotation and ONE-TENTH cubic foot per second for domestic use.

Source: PINE CREEK, a tributary of SNAKE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Not specified in certificate					

Authorized Place of Use:

IRRIGATION AND DOMESTIC							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Changes Being Made
7 S	48 E	WM	8	NE NE		0.86	POD/APOD
7 S	48 E	WM	8	SE NE		0.70	POD/APOD
7 S	48 E	WM	9	NW NW	5	10.35	POD/APOD
7 S	48 E	WM	9	SW NW	4	2.46	POD/APOD
7 S	48 E	WM	9	SE NW	3	7.65	POU, POD, APOD
Total						22.02	

11. The Department has received information from the applicant that better describes the authorized point of diversion under Certificate 72609:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	48 E	WM	17	SE SW	J. A. VAUGHN DITCH - 900 FEET NORTH AND 1695 FEET EAST FROM THE SW CORNER OF SECTION 17

12. Transfer Application T-14094 proposes to move the authorized point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances	Approximate Distance from the Authorized Point of Diversion
7 S	48 E	WM	9	NW NW	5	NORTH INTAKE - 154 FEET SOUTH AND 561 FEET EAST FROM THE NW CORNER OF SECTION 9	1700 FEET DOWNSTREAM

13. Transfer Application T-14094 also proposes an additional point of diversion approximately 550 feet upstream from proposed North Intake POD to:

Twp	Rng	Mer	Sec	Q-Q	G Lot	Measured Distances	Approximate Distance from the Proposed Point of Diversion
7 S	48 E	WM	9	NW NW	5	PARK INTAKE - 1117 FEET SOUTH AND 1179 FEET EAST FROM THE NW CORNER OF SECTION 9	550 FEET UPSTREAM

14. Transfer Application T-14094 also proposes to change the place of use of a portion of the right to:

IRRIGATION AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	48 E	WM	8	NE NE	0.70
7 S	48 E	WM	8	SE NE	1.81
7 S	48 E	WM	9	NW NW	5.14
Total					7.65

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), 690-380-2200, and 690-380-2110(2)]

16. Water has been used within the last five years 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.
17. 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-14094.
18. The water right is subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
19. The proposed points of diversion, as conditioned, divert water from the same source of surface water as the authorized point of diversion, as required by OAR 690-380-2110(2).
20. The proposed changes, as conditioned, would not result in enlargement of the right.
21. The proposed changes, as conditioned, would not result in injury to other existing water rights.
22. All other application requirements are met.

Partial Cancellation of a Water Right

23. On June 13, 2024, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from the applicant's agent. The right to be cancelled is as follows:

Certificate: 72609 in the name of SAM AKLIN (perfected under Permit S-1756)
Use: IRRIGATION OF 40.98 ACRES and DOMESTIC USE
Priority Date: SEPTEMBER 11, 1913
Rate: 0.59 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed ONE-EIGHTIETH of one cubic foot per second for each acre irrigated, or its equivalent in case of rotation and ONE-TENTH cubic foot per second for domestic use.

Source: PINE CREEK, a tributary of SNAKE RIVER

Authorized Place of Use:

IRRIGATION AND DOMESTIC						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
7 S	48 E	WM	8	NE NE		3.14
7 S	48 E	WM	8	SE NE		0.30
7 S	48 E	WM	9	NW NW	5	8.64
7 S	48 E	WM	9	SW NW	4	25.24
7 S	48 E	WM	9	SE NW	3	3.66
TOTAL						40.98

Determination and Proposed Action

The change in point of diversion, additional point of diversion and change in place of use proposed in Transfer Application T-14094 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the portion of the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved, and the portion of the abandoned right will be cancelled.

If Transfer Application T-14094 is approved, the final order will include the following:

- 1. The change in point of diversion, additional point of diversion and change in place of use proposed in Transfer Application T-14094 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 Certificate 72609 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 and the new place of use.*
- 4. Water right Certificate 72609 is cancelled.*
- 5. The quantity of water diverted at the new point of diversion (NORTH INTAKE) shall not exceed the quantity of water lawfully available at the original point of diversion (J.A. VAUGHN DITCH).*
- 6. The quantity of water diverted at the new additional point of diversion (PARK INTAKE) together with that diverted at the proposed point of diversion (NORTH INTAKE), shall not exceed the quantity of water lawfully available at the original point of diversion (J.A. VAUGHN DITCH).*

7. *Water shall be acquired from the same source of surface water as the original point of diversion.*
8. *The former place of use of the transferred right shall no longer receive water under the right.*
9. *The applicant runs and maintains a gaging station on Pine Creek near Oxbow (gage #13290190), which allows the Department to measure the amount of water that Pine Creek is contributing to the Snake River. The intakes for the Park Intake (Snake River) are below the confluence of Pine Creek. The applicant will install flow meters on both intakes, allowing the Department to monitor both the gaging station and flow meters, to ensure more water is not being diverted than the amount of water Pine Creek is adding to the Snake River, avoiding enlargement.*
10. *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.*
11. *Prior to diverting water, the water user shall install an approved fish screen at the new points of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screens meet 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 points of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screens are 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, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on JUN 20 2025


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
IVAN GALL, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared Dante Luongo. If you have questions about the information contained in this document, you may reach me at 503-979-3129 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

June 20, 2025

VIA CERTIFIED MAIL AND E-MAIL

IDAHO POWER COMPANY

KRESTA DAVIS

PO BOX 70

BOISE, ID 83707

SUBJECT: Water Right Transfer Application T-14094

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-14094. 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 Baker City Herald 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-14094
Marcy J. Osborn, District 8 Watermaster (via e-mail)
Paul Garvin, Agent for the applicant (via e-mail)