

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13689, Lake County	)	PROPOSING DENIAL OF A CHANGE IN
	)	POINT OF APPROPRIATION AND A
	)	CHANGE IN PLACE 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

KITTREDGE PROPERTIES LLC
PO BOX 149
FORT ROCK, OR 97735

Findings of Fact

1. On May 5, 2021, KITTREDGE PROPERTIES, LLC filed an application for a change in point of appropriation and a change in place of use under Certificate 53854. The Department assigned the application number T-13689.
2. Notice of the application for transfer was published on May 11, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The changes proposed on pages 7 and 8 of the transfer application are unclear and are not consistent with the requirements under OAR 690-380-3000. Specifically, it is not clear what well shall be used with the change in place of use. Both Table 1 on page 7 and Table 2 on Page 8 need to be corrected. For purposes of review of this transfer application, the Department assumes that the applicant is requesting to use Well #2 on the new place of use proposed in Transfer T-13689.
4. On October 30, 2024, the Department sent a copy of the draft Preliminary Determination to the applicant, proposing to deny Transfer Application T-13689. The draft Preliminary Determination cover letter provided a deadline of November 29, 2024, for the applicant to respond and submit the required information.

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 December 11, 2024, 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.
6. On December 9, 2024, the applicant submitted amended application pages 7 and 8, clarifying the proposed changes under Certificate 53854. Well #2 is proposed to be an additional point of appropriation to be used on 125.0 acres identified in the change in place of use.
7. The portion of the right to be transferred is as follows:

Certificate: 53854 in the name of ROBERT R. TUTTLE (perfected under Permit G-8251)
Use: IRRIGATION OF 125.0 ACRES
Priority Date: JUNE 13, 1978
Rate: 1.56 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 per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL in the FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	15 E	WM	17	NE SE	WELL #1 - 1930 FEET NORTH AND 700 FEET WEST FROM THE SE CORNER OF SECTION 17

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	15 E	WM	16	SW NW	16.20
26 S	15 E	WM	16	NW SW	18.03
26 S	15 E	WM	16	SW SW	13.73
26 S	15 E	WM	17	SE NE	19.13
26 S	15 E	WM	17	SW NE	16.00
26 S	15 E	WM	17	NW SE	16.74
26 S	15 E	WM	17	SW SE	12.48
26 S	15 E	WM	17	SE SE	12.69
TOTAL					125.00

8. Transfer Application T-13689 proposed to move the authorized point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from the Authorized POA
26 S	15 E	WM	8	NE NE	WELL #2 - 1310 FEET SOUTH AND 1320 FEET WEST FROM THE NE CORNER OF SECTION 8	1.5 MILES NORTHEAST

9. Transfer Application T-13689 also proposes to change a portion of the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	15 E	WM	8	NE NE	31.35
26 S	15 E	WM	8	NW NE	31.37
26 S	15 E	WM	8	SW NE	31.14
26 S	15 E	WM	8	SE NE	31.14
TOTAL					125.00

10. During the review process, the Department identified that the portion of Certificate 53854, proposed for transfer under this Transfer Application T-13689, is layered with Groundwater Registration GR-1500 (Certificate of Registration GR-1450), proposed for modification under Groundwater Modification Application T-13713. Consistent with OAR 690-380-2240(1), a change in place of use or character of use of a water use subject to transfer (Certificate 53854) that is layered with another water use subject to transfer, permit, or certificate of registration shall only be approved if concurrent changes to the layered water use are approved or recognized. Layered means there are multiple water uses subject to transfer, permits, and/or certificates of registration that are appurtenant to the same place of use and that have been issued for the purposes of irrigation (OAR 690-380-0100(4)).
- a) On May 5, 2021, the applicant submitted Transfer Application T-13689 to change the place of use under Certificate 53854. However, the place of use change requested is not consistent with the place of use change requested under Groundwater Registration Modification Application T-13713, received May 3, 2021. The place of use changes requested under Transfer Application T-13689 and Groundwater Registration Modification Application T-13713 would un-layer portions of Certificate 53854 that are currently layered with Groundwater Certificate of Registration GR-1450.
- b) Consistent with OAR 690-380-2240 and OAR 690-382-0200, the two layered irrigation water uses must move together unless certain criteria are met. Layered irrigation water uses (Certificate 53854 and Certificate of Registration GR-1450) may only be separated if the layered portion of the supplemental irrigation water right is to be moved to the same place of use as another primary irrigation water right with similar reliability (OAR 690-380-2240(5) and OAR 690-382-0200(5)). Under OAR 690-380-2240(5), the layered portion of a certificate of registration, for irrigation use, may be designated by an applicant as supplemental irrigation and then be moved to the same place of use of another similar primary irrigation right.

11. The Department determined that the portion of the land under Certificate 53854, proposed for transfer, that is currently layered with Groundwater Certificate of Registration GR-1450 for irrigation use is approximately:

Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	15 E	WM	17	SE NE	7.5
26 S	15 E	WM	17	SW NE	13.0
26 S	15 E	WM	17	NE SE	38.8
26 S	15 E	WM	17	NW SE	16.74
26 S	15 E	WM	17	SW SE	12.48
26 S	15 E	WM	17	SE SE	12.69
TOTAL					101.21

Transfer Review Criteria [OAR 690-380-0100(14), OAR 690-380-4010(2), OAR 690-380-2110(2) and OAR 690-380-2200]

12. Water has been used within the last five years prior to the submittal of Transfer Application T-13689, 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.
13. 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-13689.
14. The water right is subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
15. The proposed point of appropriation develops water from the same aquifer as the authorized point of appropriation, as required by OAR 690-380-2110(2).
16. The proposed Transfer Application T-13689 and modifications proposed under Groundwater Modification T-13713 would un-layer one irrigation water right from another irrigation right (GR-1500 and Certificate 53854) appurtenant to the same lands (ORS 540.510), resulting in enlargement of Certificate 53854.
17. The proposed change, as conditioned, would not result in injury to other water rights.
18. The application is not complete because the Groundwater Modification T-13713 would result in the un-layering of the certificate and groundwater registration and is inconsistent with administrative rule OAR 690-380-2240.

Determination and Proposed Action

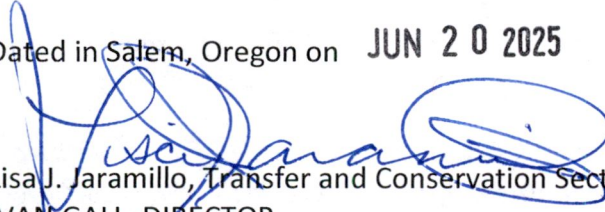
The change in point of appropriation and change in place of use proposed in Transfer Application T-13689 appear to be not consistent with the requirements of 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be denied.

If the deficiencies identified above are resolved and Transfer Application T-13689 is approved, the final order will include the following:

- 1. The change in point of appropriation and change in place of use proposed in Transfer Application T-13689 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 Certificate 53854 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 point of appropriation or the new place of use.*
- 4. Water right Certificate 53854 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
- 5. The quantity of water diverted at the new point of appropriation (Well # 2) together with that diverted at the original point of appropriation (Well #1) shall not exceed the quantity of water lawfully available at the original point of appropriation (Well #1).*
- 6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
- 7. The former place of use of the transferred right shall no longer receive water under the right.*
- 8. Water Use Measurement Condition:*
 - 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 meter or measuring device in good working order.*
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
- 9. 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.*

10. 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 by Kim French. If you have questions about the information in this document, you may reach me at 503 979-9607 or Kim.R.French@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

KITTREDGE PROPERTIES LLC
PO BOX 149
FORT ROCK, OR 97735

SUBJECT: Water Right Transfer Application T-13689

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to deny application T-13689. This document is an intermediate step in the denial process; water may not be used legally as proposed in the transfer application until a Final Order approving the transfer 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, 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 Department's notice.

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 503 979-9607 or Kim.R.French@water.oregon.gov 971-701-5485 or Elyse.D.Richman@water.oregon.gov, if I may be of assistance.

Sincerely,

Kim French
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-13689
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)
Darryl J. Anderson, Agent for the applicant (*via e-mail*)

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