

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13805, Marion County	)	PROPOSING DENIAL 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.

**Applicants**

BRYAN SCHURTER  
2913 HIBBARD RD NE  
SILVERTON, OR 97381

HARRY KLOPFENSTEIN  
11733 SELAH SPRINGS RD NE  
SILVERTON, OR 97381

**Findings of Fact**

1. On August 30, 2021, Bryan Schurter and Harry Klopfenstein filed an application for additional points of appropriation under Certificate 95208. The Department assigned the application number T-13805.
2. Notice of the application for transfer was published on August 30, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 8, 2025, the Department sent a copy of the draft Preliminary Determination to the applicant, proposing to deny Transfer Application T-13805. The draft Preliminary Determination cover letter provided a deadline of August 7, 2025, for the applicants to respond and submit the required information. The applicants did not respond by the deadline.
4. The portion of the right to be transferred is as follows:  

<b>Certificate:</b>	95208 in the name of BEN KAUFMAN (perfected under Permit G-11276)
<b>Use:</b>	IRRIGATION OF 41.0 ACRES
<b>Priority Date:</b>	NOVEMBER 7, 1990
<b>Rate:</b>	0.52 CUBIC FOOT PER SECOND

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.

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

**Source:** A WELL in the DRIFT CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	1 W	WM	9	NE NW	1290 FEET SOUTH AND 1340 FEET EAST FROM THE NW CORNER OF SECTION 9

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
7 S	1 W	WM	4	SE SW	58	38.8
7 S	1 W	WM	4	SW SE	58	2.2
					Total	41.0

5. Transfer Application T-13805 proposes additional points of appropriation with approximate distances as described below:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Distance from authorized Well in Miles (mi.)
7 S	1 W	WM	4	NE SW	58	WELL 2 - 700 FEET SOUTH AND 1000 FEET WEST FROM THE CENTER 1/ 4 CORNER OF SECTION 4	0.6 mi. N
7 S	1 W	WM	4	SW SW	58	WELL 3 – 135 FEET NORTH AND 400 FEET WEST FROM THE SOUTHERLY SW CORNER OF DLC 58	0.3 mi. NW

6. Certificate 95208 was approved with decline triggers as follows:

Use of water from the well(s) shall not be allowed if the well(s) displays an (A) average water level decline of 3 or more feet per year for 5 consecutive years, or (B) a water level decline of 15 or more feet in fewer than 5 consecutive years, or (C) a water level decline of 25 or more feet, or (D) a hydraulic interference decline of 25 or more feet in any neighboring well with senior priority which provides water for an authorized use.

7. The Water Resources Department has determined that the level from which the cited declines in (A), (B) and (C) above will be referenced is 94.0 feet Below Land Surface (BLS).
8. The review of T-13805 indicates that groundwater level declines have occurred in the authorized Point of Appropriation (POA). As of March 2025, static water level in the authorized POA was 142.7 feet BLS, which is a decline of 48.7 feet below the reference level. The table below shows declines for the last 13 years:



Well	Date	Water Level (BLS)
MARI0006161	03/20/2025	142.7
MARI0006161	03/25/2024	139.4
MARI0006161	03/16/2023	135.5
MARI0006161	03/23/2022	145.4
MARI0006161	03/22/2021	138.7
MARI0006161	03/11/2020	146.2
MARI0006161	03/20/2019	145.6
MARI0006161	03/03/2010	129.0
MARI0006161	03/13/2017	126.0
MARI0006161	03/15/2016	133.9
MARI0006161	03/16/2015	128.4
MARI0006161	03/13/2014	125.7
MARI0006161	03/18/2013	121.3

9. For OWRD to approve a transfer, the applicant must (among other things) prove that the water use, as conditioned, would not result in enlargement. OAR 690-380-5000(1)(c). Water use at a new or additional point of appropriation, if water is not legally available at the original point of appropriation, constitutes enlargement. OAR 690-380-0100(2)(d). Because the static water level decline condition under certificate 95208 has been triggered the applicant cannot meet its burden of proof.
10. This represents a change in OWRD's policy. Previously, the Department would approve transfers and permit amendments with static water level decline conditions specific to the new or additional points of appropriation that were based on the static water level decline conditions in the underlying permits or certificates. For the reasons described above, the Department has determined that this policy is inconsistent with the requirement that the applicant demonstrate that the proposed transfer would not result in enlargement.

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


11. Water has been used within the last five years prior to the submittal of Transfer Application T-13805 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.
12. 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-13805.
13. The water right is subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
14. The proposed points of appropriation develop groundwater from the same aquifer as the authorized point of appropriation, as required by OAR 690-380-2110(2).

15. As outlined in Findings of Fact No. 6, 7 and 8, the proposed change will enlarge the water right.
16. The proposed change, as conditioned, would not result in injury to other existing water rights.
17. All other application requirements are met.

#### **Determination and Proposed Action**

The additional point of appropriation proposed in Transfer Application T-13805 appears to be not 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 denied.

Dated in Salem, Oregon on **AUG 08 2025**



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

This Preliminary Determination was prepared by Scott Grew. If you have questions about the information in this document, you may reach him at [scott.a.grew@water.oregon.gov](mailto:scott.a.grew@water.oregon.gov) or 503-986-0890.

#### **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

August 8, 2025

VIA CERTIFIED MAIL AND E-MAIL

## Water Resources Department

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SUBJECT: Water Right Transfer Application T-13805

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to deny application T-13805. 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 contact me at [scott.a.grew@water.oregon.gov](mailto:scott.a.grew@water.oregon.gov) or 503-986-0890 if I may be of assistance.

Sincerely,

*Scott Grew*

Transfer Specialist  
Transfer and Conservation Section

cc: Transfer Application file T-13805  
Gregory J. Wacker, District 16 Watermaster (via e-mail)  
Doann Hamilton, Pacific Hydro-Geology Inc, Agent for the applicant (via e-mail)

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