

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-14173, Harney County	)	PROPOSING APPROVAL OF A CHANGE IN
	)	POINT OF APPROPRIATION AND 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.

Applicants

RATTLESNAKE CREEK LAND AND CATTLE CO.	CHRISTOPHER AND DANIELLE GREGG
524 HWY 20 N	29724 HWY 20 WEST
HINES, OR 97738	HINES, OR 97738

Findings of Fact

1. On February 13, 2023, Rattlesnake Creek Land and Cattle Co. and Christopher and Danielle Gregg, filed an application to change the point of appropriation (POA), and the place of use (POU) under Certificate 90309. The Department assigned the application number T-14173.
2. Notice of the application for transfer was published on February 21, 2023, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The description of Certificate 90309 includes a maximum cumulative total of 3.23 cfs to be used, being 3.23 cfs for Industrial Use and 3.23 cfs for Supplemental Irrigation. This maximum cumulative total is set because the water use under Certificate 90309 is not to exceed 3.23 cfs. The Department recognizes that the additional limit of 3.23 cfs for both Industrial Use and Supplemental Irrigation are equal because the water being used for these purposes is meant to be passed through the same water delivery system.
4. The application describes the water delivery system as follows:
"Water is pumped from the Monaco Well and conveyed by closed conduit into a geothermal heating system for the large fabrication building. Also, tail water from the heating system is released and conveyed to the flood irrigated fields to the south by ditch or canal."

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. The Department has determined from this description of water delivery system, and the Claim of Beneficial Use filed for application G-14165 on December 6, 2004, that the Supplemental Irrigation Use portion of the Certificate is linked directly to the Industrial Use portion, where tail water that is used from the Industrial Use portion is then delivered via ditch or canal for flood irrigation during the irrigation season.
6. The proposed changes would result in enlargement of the right. Because the Supplemental and Industrial portions of the right are linked via water delivery system, and the applicant proposes to use half (1.615 CFS) of the maximum cumulative total rate (3.23 CFS) used for INDUSTRIAL USE to irrigate an additional 129.2 acres without transferring Supplemental acreage EQUAL to the amount of CFS being transferred, the total number of acres irrigated under this right would be enlarged.
7. Further, because the applicant proposes a change in character of use, and would have to transfer a portion of the Supplemental Irrigation of Certificate 90309 to primary irrigation, the Department would require the applicant to submit documentation of the quantity of water historically used under the supplemental water right. The applicant must also cancel the portion of primary acreage under Certificate 10176 layered with the portion of supplemental acreage Certificate transferred under 90309 per OAR 690-380-2320.
8. The proposed changes would also increase the rate of water to be used for the portion of supplemental irrigation on the "TO" lands. The current rate for supplemental irrigation is 1/140 of one cubic foot per second (cfs) per acre irrigated. Under the proposed changes, the new rate for the proposed supplemental irrigation would be 1/80 of one cfs per acre irrigated.
9. In order to overcome the finding of enlargement, the applicants would have to transfer the amount of supplemental acreage that is irrigated with 1.615 cfs (this would amount to 223.4 acres), which is equal to the amount of water being transferred from the Industrial Use portion.
10. On October 18, 2024, the Department sent a draft Preliminary Determination proposing to deny Transfer Application T-14173 to the applicants.
11. On April 4, 2025, the Department sent a revised draft Preliminary Determination proposing to deny Transfer Application T-14173 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of May 4, 2025, for the applicants to respond, and amend the application.
12. On May 30, 2025, the Department received amended application pages and map from the applicant's agent. The proposed changes are to change the place of use for the industrial use portion of the right, and to change the point of appropriation for Certificate 90309. The proposed changes would not result in enlargement of the right.
13. On August 8, 2025, the applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

14. The right to be transferred is as follows:

Certificate: 90309 in the name of CHRISTOPHER AND DANIELLE GREGG; RATTLESNAKE CREEK LAND and CATTLE COMPANY (perfected under Permit G-13485)

Use: IRRIGATION OF 6.7 ACRES, SUPPLEMENTAL IRRIGATION OF 446.8 ACRES, AND INDUSTRIAL USE (GEOTHERMAL HEATING)

Priority Date: NOVEMBER 24, 1997

Rate: MAXIMUM CUMULATIVE TOTAL OF 3.23 CUBIC FEET PER SECOND (CFS) BEING 0.08 CFS FOR IRRIGATION, 3.23 CFS FOR SUPPLEMENTAL IRRIGATION AND 3.23 CFS FOR INDUSTRIAL USE (GEOTHERMAL HEATING), or its equivalent in case of rotation measured at the well.

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 3.0 acre-feet per acre irrigated during the irrigation season of each year.

Period of Use: Year round for INDUSTRIAL USE (GEOTHERMAL HEATING) and March 1 through September 1 for IRRIGATION

Source: WELL 2 in the WEST FORK SILVIES RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	30 E	WM	26	NE SE	WELL 2 - 2544 FEET NORTH AND 907 FEET WEST FROM THE SE CORNER OF SECTION 26

Authorized Place of Use:

INDUSTRIAL USE (GEOTHERMAL HEATING)				
Twp	Rng	Mer	Sec	Q-Q
23 S	30 E	WM	26	SE NE

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	30 E	WM	36	NE NW	3.7
23 S	30 E	WM	36	SW NW	3.0
Total					6.7

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	30 E	WM	36	NE NE	40.0
23 S	30 E	WM	36	NW NE	38.0
23 S	30 E	WM	36	SW NE	40.0
23 S	30 E	WM	36	SE NE	38.0
23 S	30 E	WM	36	NE NW	34.8
23 S	30 E	WM	36	NW NW	33.0
23 S	30 E	WM	36	SW NW	23.0
23 S	30 E	WM	36	SE NW	40.0
23 S	30 E	WM	36	NE SW	40.0
23 S	30 E	WM	36	NE SE	40.0

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	30 E	WM	36	NW SE	40.0
23 S	30 E	WM	36	SE SE	40.0
Total					446.8

15. Transfer Application T-14173 proposes to move the authorized point of appropriation with approximate distance from the existing point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from Authorized POA
23 S	30 E	WM	35	NE NE	GLERUP – 550 FEET SOUTH AND 550 FEET WEST FROM THE NE CORNER OF SECTION 35	0.6 mile Southeast

16. Transfer Application T-14173 also proposes to change the place of use of the INDUSTRIAL USE portion of the right to:

INDUSTRIAL USE (GEOTHERMAL HEATING)				
Twp	Rng	Mer	Sec	Q-Q
23 S	30 E	WM	35	NE NE

Transfer Review Criteria (OAR 690-380-0100(14), OAR 690-380-4010(2), OAR 690-380-2110(2), 690-380-2200, and 690-380-2300)

17. Because a previous transfer (T-12359) has been filed and is still pending with the Department, the presumption of forfeiture of Certificate 90309 would be rebutted under ORS 540.610(2)(m). There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
18. 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-14173.
19. The water right is subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
20. 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).
21. The proposed changes, as conditioned, would not result in enlargement of the right.
22. The proposed changes, as conditioned, would not result in injury to other existing water rights.
23. All other application requirements are met.

Determination and Proposed Action

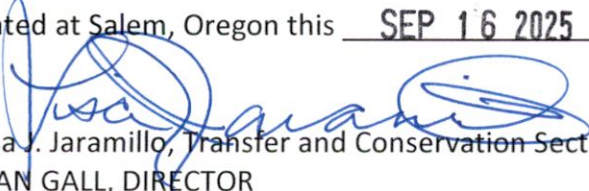
The changes in point of appropriation, and place of use, appear to be consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-14173 is approved, the final order will include the following:

1. *The changes in point of appropriation, and place of use proposed in Transfer Application T-14173 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 90309 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 appropriation or the new place of use.*
4. *Water right Certificate 90309 is cancelled.*
5. *The quantity of water diverted at the new point of appropriation (Glerup) shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 2).*
6. *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.*
7. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
8. *The former place of use of the transferred right shall no longer receive water under the right.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2027**. 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 at Salem, Oregon this SEP 16 2025


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

This Preliminary Determination was prepared by Dante J. Luongo. If you have questions about the information in this document you may reached 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 \$720 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$1425 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

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725 Summer St NE, Suite A

Salem, OR 97301

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www.oregon.gov/owrd

September 16, 2025

VIA CERTIFIED MAIL AND E-MAIL

RATTLESNAKE CREEK LAND AND CATTLE CO.
524 HWY 20 N
HINES, OR 97738

CHRISTOPHER AND DANI GREGG
29724 HWY 20 W
HINES, OR 97738

SUBJECT: Water Right Transfer Application T-14173

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-14173. 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 Burns Times 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 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 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-14173
Donald (dally) S. Swindlehurst, District 10 Watermaster (via e-mail)
Scott D. Montgomery, Agent for the applicant (via e-mail)