



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

Water Right Application Superseding Initial Review

January 26, 2024

BROWN SAYLOR RANCH, LLC
22416 ANZA AVE
TORRANCE CA 90505

Reference: Application S-89421

Due to inclement weather, the Department was unable to give public notice of the Initial Review issued on January 12, 2024, in a weekly notice as required in OAR 690-310-0090(1). Therefore, the Department is issuing this Superseding Initial Review, which will be included in the January 30, 2024, weekly public notice.

This document is to inform you of the preliminary analysis of the water-use permit application and to describe your options. In determining whether an application may be approved, the Water Resources Department (Department) must consider the factors listed below, all of which must be favorable to the proposed use if it is to be allowed. Based on the information supplied, the Department has made the following preliminary determinations:

Preliminary Determinations under Oregon Administrative Rule (OAR) 690-310-0080:

1. The application proposes the diversion of 0.3 cubic foot per second (CFS), further limited to 70.0 acre-feet (AF) annually, of water from Butter Creek, tributary to Umatilla River, for irrigation of 17.5 acres from January 1 through September 1 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Irrigation is **not** an allowable use from Butter Creek under the Umatilla Basin Program (OAR 690-507-0080(2)(a) and (2)(b)(A)).
4. An assessment of water availability at 80% exceedance for the proposed use was completed using the Department's Water Availability Reporting System. A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(a). The assessment established, during the period of use requested, surface water is **not** available from January 1 through September 1 of each year.

5. OAR 690-033-0120(2)(a) prohibits the diversion of water from April 15 through September 30 each year.
6. The proposed use is not located within or above any state scenic waterway.
7. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.
8. The area proposed to be irrigated under this application is currently covered by existing irrigation water rights evidenced by Certificate 2679, and Permits S-55061, S-55192, S-54633, and S-55401, which conflict with the application. The Department understands it is the applicant's intent to resolve the conflict with Certificate 2679 by transferring a portion of the right with Transfer Application T-14367. Although it is unlikely that a permit will be issued, if the Department's findings change, any permit issued under this application may contain conditions limiting how irrigation under the permit can be used in conjunction with any potential use under existing Permits S-55061, S-55192, S-54633, and S-55401.
9. See the **Additional Information Required** section below for deficiencies with the application.

Summary of Preliminary Determinations
--

<p>The diversion of 0.3 CFS of water, further limited to 70.0 AF annually, from Butter Creek, tributary to Umatilla River, for irrigation of 17.5 acres from January 1 through September 1 of each year is not allowable.</p>
--

Additional Information Required:

Although it is unlikely that a permit will be issued, if the Department's findings change, additional information will be required. Please provide the following item(s):

1. The names and addresses of the owners of any lands not owned by the applicant and that are crossed by the proposed ditch, canal or other work, even if the applicant has obtained written authorization or an easement from the owner.
2. Evidence that you have written authorization or an easement permitting access to lands not owned by you.
3. The map submitted shows a single point of diversion located where water from Butter Creek would be diverted into a ditch. To meet the requirements of OAR 690-310-0050(4)(a), the location of each diversion point needs to be shown including any location where water would be diverted from the ditch to the place of use.

Please submit the requested information listed above no later than **February 29, 2024**. If you need more time, you may request an administrative hold for up to an additional 180 days. You must submit the request in writing, stating how much more time you will need and why you need additional time. If an administrative hold is granted, your application will not be processed further until the requested information is received or the extended deadline has passed. If we do not receive the items requested

above or a request for an administrative hold by this date, the Department will likely reject the application.

Public Comment & Further Review:

Public interest issues and/or public comments will be addressed as the Department prepares a Proposed Final Order. If significant public interest issues are identified, they could have an impact on the eventual outcome of the application.

Division 33 Review – The Department’s Division 33 administrative rules (OAR 690-033) establish additional procedures and standards to aid the Department in determining whether a proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened, or endangered (STE) fish species. This Initial Review does not address the potential impact that your proposed use may have on these species.

Your application will now undergo an additional review from numerous federal, state, local, and tribal governmental entities. This review may cause your application to be limited, conditioned, or denied. Depending on the proposed use, you may be required to mitigate for potential impacts identified in the review.

Mitigation for impacts to STE Species – Mitigation is often complicated, time consuming, and expensive, and may include, but is not limited to, actions such as replacing the proposed amount of water within the impacted reach through purchasing or transferring an existing water right. Following the Initial Review, you will be notified if mitigation is required, due to impacts to STE fish species.

If you choose to pursue mitigation, you will likely need to place your application on administrative hold in order to explore options. There will be an additional fee of \$790 required with any mitigation proposal submitted.

At this time, you must decide whether to proceed or to withdraw the application.

- To Proceed - If you choose to proceed with the application, you do not have to notify the Department. The application will be placed on the Department's Public Notice to allow others the opportunity to comment. After the comment period the Department will complete a public interest review and issue a Proposed Final Order.
- To Withdraw - You may withdraw the application and receive a refund (minus a \$310 processing fee per application). You must notify the Department **in writing by February 9, 2024**. For your convenience you may use the enclosed "STOP PROCESSING" form.

Although it is unlikely that a permit will be issued, if the Department's findings change and a permit is issued, it will likely include the following conditions:

1. Construction of the water system shall begin within five years of the date of permit issuance. The deadline to begin construction may not be extended. A permit is subject to cancellation proceedings if the begin construction deadline is missed.
2. **Water Use Measurement, Recording, and Reporting:**
 - A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter, or other suitable measuring device as determined by the watermaster, at each point of diversion. The permittee shall maintain the device in good working order.
 - B. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
 - C. The permittee shall keep a complete record of the volume of water diverted each month, and shall submit a report which includes water-use measurements to the Department annually, or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.
 - D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

The water source identified in the application may be affected by an Agricultural Water Quality Management Area Plan. These plans are developed by the Oregon Department of Agriculture (ODA) with the cooperation of local landowners and other interested stakeholders, and help to ensure that current and new appropriations of water are done in a way that does not adversely harm the environment. You are encouraged to explore ODA's Water Quality Program website at www.oregon.gov/ODA to learn more about the plans and how they may affect the proposed water use.

For Further Information:

Feel free to contact me at Lucinda.R.Vranizan@water.oregon.gov or 971-375-2256 if you have any questions regarding the contents of this letter or the application. Please include the application number in all correspondence. General questions about water rights and water use permits should be directed to our customer service staff at 503-986-0900. When corresponding by mail, please use this address: Lucinda Vranizan, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,

Lucinda Vranizan

Lucinda Vranizan
Water Right Application Specialist
Oregon Water Resources Department

Enclosures: Application Process Description
 Stop Processing Request Form

S-89421
WAB: 30710305
Proposed to Deny

APPLICATION FACT SHEET

Application File Number: S-89421

Applicant: BROWN SAYLOR RANCH, LLC

County: UMATILLA

Watermaster: GREG SILBERNAGEL, #5, NCR

Priority Date: NOVEMBER 29, 2023

Source: BUTTER CREEK, TRIBUTARY TO UMATILLA RIVER

Purpose or Use: IRRIGATION OF 17.5 ACRES

Rate: 0.3 CUBIC FOOT PER SECOND, FURTHER LIMITED TO 70.0 ACRE-FEET ANNUALLY

Period of Use: JANUARY 1 THROUGH SEPTEMBER 1

Basin Name & Number: UMATILLA, #7

WAB: BUTTER CR > UMATILLA R - AB WESTLAND CANAL

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	28 E	WM	19	NE SW	5 FEET SOUTH AND 750 FEET WEST FROM C/14 CORNER, SECTION 19

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	28 E	WM	8	SE SW	17.5

PUBLIC NOTICE DATE: January 30, 2024

14 DAY STOP PROCESSING DEADLINE DATE: February 9, 2024

30 DAY COMMENT DEADLINE DATE: February 29, 2024

**APPLICATION PROCESS DESCRIPTION FOR
GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS**

In order to use the waters of Oregon, an application must be submitted and a permit obtained from the Water Resources Department. The water must be used for beneficial purpose without waste. For more information about water right topics, weekly public notice, forms and fees please visit our website at: www.oregon.gov/owrd

1. Pre-application considerations

- Follow instructions in the application packet.
- If you have questions about completing an application or would like to arrange a pre-application conference, contact the Department's Water Rights Customer Service Group at (503) 986-0900.

2. Application filing

- Application with fee is received by the Department.
- Department determines completeness of application.
- If use is not allowed by statute (ORS 538), the application and fees are returned to the applicant.
- An incomplete application and fees are returned to the applicant.
- Only a complete application receives a tentative priority date, is assigned a caseworker, and moves forward for processing.

3. Initial Review (IR)

- Caseworker reviews application by considering basin plans, water availability, statutory restrictions, and all other appropriate factors.
- Caseworker sends IR report to Applicant.
- Four days after date of the IR, it is included in Department's weekly Public Notice.
- Public comments must be submitted within 30 days after the Public Notice.

4. Proposed Final Order (PFO)

- Caseworker evaluates application against required criteria and develops draft permit, if appropriate.
- PFO includes instructions for filing of protests.
- Caseworker considers public comments and mails PFO to Applicant.
- The PFO is included in Department's weekly Public Notice.
- Public protests to the PFO must be submitted within 45 days after the Public Notice.

5. Final Order (FO)

- If no protest is filed, Final Order is issued.

The protest process

If one or more protests are filed, the process consists of:

- settlement discussion;
- contested case hearing;
- Proposed Order;
- period of time to file exceptions; or
- possible hearing by Water Resources Commission.
- Final Order is issued.

Permit holder responsibilities

- Comply with all water use conditions of the permit.
- Advise Department of address change or assignment to new permit holder.
- If need arises, request extension of time or authorize cancellation of permit.
- Submit timely claim of beneficial use (COBU) to the Department.
- Most permits require COBU to be prepared by a Certified Water Right Examiner.
- Permits may be canceled by the permit holder or by the Department for failure to comply with or one or more permit conditions.

STOP PROCESSING REQUEST FORM

FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS

- Stop processing deadline is within 14 days of Initial Review.

Applicant notification to withdraw Water Right Application **S-89421**.

After reviewing the Initial Review for my application, I request that processing be stopped, and the fees be refunded (minus a \$310 processing fee.) I understand that without a valid permit, I may not legally use the water as requested in my application.

Signature _____ Date _____

Signature _____ Date _____

Under ORS 537.150 (5) and 537.620 (5) timely submission of this request authorizes that the water right application process be stopped, and all filing fees (except \$310 processing fee) be returned.

- This notice must be received at Water Resources Department by:

February 9, 2024

- Return the notice to:

OWRD, Water Right Services Division
STOP PROCESSING
725 Summer Street, NE - Suite A
Salem OR, 97301-1266
