



4. On March 24, 2021, the Department issued a Preliminary Determination proposing to approve Transfer T-13433 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on March 30, 2021, and in the Ontario Argus Observer newspaper on March 26, 2021, and April 2, 2021 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

5. The portion of the right to be transferred is as follows:

**Certificate:** 47186 in the name of THOS J BROSANAN (confirmed by MALHEUR RIVER Decree)  
**Use:** IRRIGATION of 3.5 ACRES, DOMESTIC and STOCK  
**Priority Date:** AUGUST 25, 1902  
**Rate/Duty:** 1.5 acre feet per acre in any 30-day period to June 1st, 1 acre foot per acre in any 30 day period after June 1st, of each year, or 3 acre feet per acre during any season, diverted at a rate not to exceed ONE-TWENTIETH of a cubic foot per second per acre.  
**Source:** MALHEUR RIVER, a tributary of SNAKE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
18 S	46 E	WM	2	SE NE	POD 1 - 250 FEET NORTH AND 225 FEET WEST FROM THE E1/4 CORNER OF SECTION 2

**Authorized Place of Use:**

IRRIGATION, DOMESTIC and STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	47 E	WM	28	NE SW	3.5

6. Transfer Application T-13433 proposes an additional point of diversion approximately 6.3 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
17 S	47 E	WM	28	NE SW	3	POD 2 - 748 FEET SOUTH AND 348 FEET EAST FROM THE CENTER-WEST 1/16 CORNER OF SECTION 28

7. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device may be required in the future at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device.

**Transfer Review Criteria [OAR 690-380-4010(2)]**

8. 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.

9. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-13433.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.
12. All other application requirements are met.

**Conclusions of Law**

The additional point of diversion proposed in Transfer Application T-13433 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

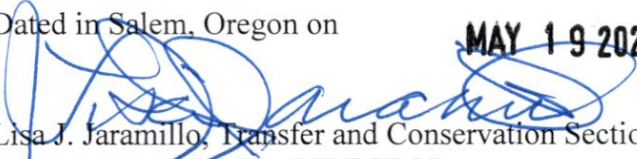
**Now, therefore, it is ORDERED:**

1. The additional point of diversion proposed in Transfer Application T-13433 is 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 47186 and any related decree.
3. Water right Certificate 47186 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. The combined quantity of water diverted at the new additional point of diversion (POD 2), together with that diverted at the original point of diversion (POD 1), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 1).
5. 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 new point of diversion.
  - 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.

6. Within one year after receiving written notification from the Oregon Department of Fish and Wildlife (ODFW) that a fish screening and/or by-pass device is required, the water user shall install a screening and/or by-pass device, as appropriate, at the new point of diversion. The fish screening and/or by-pass device must meet ODFW's design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screening and/or by-pass device meets ODFW's criteria. Once installed the water user shall maintain and operate the fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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 change and full beneficial use of the water.
8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on

**MAY 19 2021**

  
Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
THOMAS M BYLER, DIRECTOR  
Oregon Water Resources Department

Mailing date:           **MAY 20 2021**