# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application	)	FINAL ORDER APPROVING AN
T-13433, Malheur County	)	ADDITIONAL POINT OF DIVERSION

# **Authority**

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, 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**

DARYN BUNDTROCK PO BOX 773 ONTARIO, OR 97914

## **Findings of Fact**

- On May 8, 2020, DARYN BUNDTROCK filed an application for an additional point of diversion under Certificate 47186. The Department assigned the application number T-13433.
- 2. Notice of the application for transfer was published on May 19, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. On November 30, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13433 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 31, 2020, for the applicant to respond. 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.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

- 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 BROSNAN (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.

- 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.
- 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 1 9 2021

Lisa J. Jaramillo, Transfer and Conservation Section Manager, for

THOMAS M BYLER, DIRECTOR Oregon Water Resources Department

Mailing date: MAY 2 0 2021