

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12366, Malheur County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINTS OF DIVERSION
	)	AND CHANGE IN PLACES OF USE

**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**

CHANDELE A. BOWEN  
PO BOX 287  
ADRIAN, OR 97901

**Findings of Fact**

1. On May 2, 2016, EARL TURPEN filed an application to change the points of diversion and change the places of use under Certificates 4978 and 27852. The Department assigned the application number T-12366.
2. Notice of the application for transfer was published on May 10, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 30, 2016, the agent for the applicant submitted an amended map.
4. On October 31, 2016, ODFW submitted an amended comment form approving the existing fish screen.
5. On September 1, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12366 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 3, 2016, 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.
6. On March 5, 2020, received an assignment by proof of Transfer Application T-12366 from Earl Turpen to Chandele A. Bowen.

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 notice of this preliminary determination.

7. On March 12, 2020, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of deficiencies in the application. The revised application map submitted on January 21, 2020, identified acres located under a road, which are not subject to transfer, and the Department determined the proposed place of use is located within the Ridgeview Irrigation District, which requires the submittal of Supplemental Form D. The Department requested that the deficiencies be resolved by April 13, 2020.
8. On March 26, 2020, the applicant's agent submitted a revised application map, removing the acres located under the road.
9. On April 28, 2020, the Department received a Supplemental Form D, resolving all deficiencies.
10. The portion of the first right to be transferred is as follows:

**Certificate:** 4978 in the name of MARY H. NAPTON (perfected under Permit S-4668)  
**Use:** IRRIGATION OF 40.42 ACRES  
**Priority Date:** JUNE 26, 1920  
**Rate:** 0.51 CUBIC FOOT PER SECOND  
**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 in case of rotation.  
**Source:** SNAKE RIVER

**Authorized Place of Use:**

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Type of Change	
							Point of diversion only	Point of diversion and place of use
22 S	47 E	WM	6	SW SW	6	25.54	14.00	11.54
22 S	47 E	WM	6	SE SW	7	14.88	-	14.88
Total						40.42		

11. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 4978 as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
22 S	47 E	WM	6	SW SW	6	EXISTING POD - 1030 FEET NORTH AND 700 FEET EAST OF THE SW CORNER OF SECTION 6

12. Transfer Application T-12366 proposes to move the authorized point of diversion approximately 726 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
22 S	46 E	WM	1	NE SE	10	PROPOSED POD - 170 FEET NORTH AND 230 FEET WEST OF THE M.C. BETWEEN SEC.1, T22S, R46E, WM AND SEC. 6, T22S, R47E, WM.

13. Transfer Application T-12366 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
22 S	46 E	WM	1	SW SE	26.42

14. The second right to be transferred is as follows:

**Certificate:** 27852 in the name of FAY M. AND BETTY JO METZER (perfected under Permit S-16213)  
**Use:** IRRIGATION OF 34.2 ACRES AND SUPPLEMENTAL IRRIGATION OF 9.0 ACRES  
**Priority Date:** MARCH 6, 1945  
**Rate:** 1.08 CUBIC FEET PER SECOND  
**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-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated during the irrigation season of each year, and shall be further limited to a diversion of not to exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** SNAKE RIVER, a tributary of COLUMBIA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot
22 S	47 E	WM	6	SW SW	6

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
22 S	46 E	WM	1	SW SE		1.4
22 S	46 E	WM	1	E ½ SE	10	32.8
					Total	34.2

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
22 S	47 E	WM	6	SW SW	6	9.0

15. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 27852 as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
22 S	47 E	WM	6	SW SW	6	EXISTING POD - 1030 FEET NORTH AND 700 FEET EAST OF THE SW CORNER OF SECTION 6

16. Transfer Application T-12366 proposes to move the authorized point of diversion approximately 726 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
22 S	46 E	WM	1	NE SE	10	PROPOSED POD - 170 FEET NORTH AND 230 FEET WEST OF THE M.C. BETWEEN SECTION 1, T22S, R46E AND SECTION 6, T22S, R47E

17. Transfer Application T-12366 also proposes to change the place of use of a portion of the right to:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
22 S	46 E	WM	6	SW SW	6	1.5

18. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is currently equipped with an appropriate fish screen.

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

19. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
20. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-12366.
21. The proposed changes would not result in enlargement of the rights.
22. The proposed changes would not result in injury to other water rights

**Determination and Proposed Action**

The change in points of diversion and change in places of use proposed in Transfer Application T-12366 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 transfer application will be approved.

*If Transfer Application T-12366 is approved, the final order will include the following:*

- 1. The change in points of diversion and change in places of use proposed in Transfer Application T-12366 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 Certificates 4978 and 27852 and any related decree.*
- 3. Water right Certificates 4978 and 27852 are cancelled. . A new certificate will be issued describing that portion of Certificate 4978 not affected by this transfer.*
- 4. The quantity of water diverted at the new point of diversion (Proposed POD), shall not exceed the quantity of water lawfully available at the original point of diversion (Existing POD).*

5. *The water user shall operate and maintain an approved fish screen at the new point of diversion. If Oregon Department of Fish and Wildlife (ODFW) determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.*
6. *The former place of use of the transferred rights shall no longer receive water under the rights.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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.*
8. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this JUN 30 2020.

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

This Preliminary Determination was prepared by Ken Dowden, and has now been assigned to Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@oregon.gov)

*Protests should be addressed to the attention of Water Rights Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.*

**IMPORTANT:** Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

**Notice Regarding Service Members:** Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>



# Oregon

Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

June 30, 2020

CHANDELE A. BOWEN  
PO BOX 287  
ADRIAN, OR 97901

SUBJECT: Water Right Transfer Application T-12366

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12366. 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, 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.

**IMPORTANT:** Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Please do not hesitate to contact me, at [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@oregon.gov) or (503) 986-0825, if I may be of assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Corey Courchane".

Corey Courchane  
Transfer Specialist  
Transfer and Conservation Section

cc: T-12366  
Ronald K. Jacobs, District 9 Watermaster (*via e-mail*)  
Pat J. Woodcock Engineering Northwest, LLC, Agent for the applicant (*via e-mail*)  
Ken Dowden, Transfer Specialist, Northwest Region (*via e-mail*)

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