

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13285, Baker County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN PLACE OF USE AND
	)	CHARACTER OF USE AND PARTIAL
	)	CANCELLATION OF A WATER
	)	RIGHT

**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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicant**

OREGON DEPARTMENT OF TRANSPORTATION  
ATTN: KATIE HUBLER  
200 HAWTHORNE AVE SE, SUITE B240  
SALEM, OR 97301

**Findings of Fact**

1. On November 8, 2019, OREGON DEPARTMENT OF TRANSPORTATION, ATTN: KATIE HUBLER filed an application to change the place of use and to change the character of use under Certificate 42462. The Department assigned the application number T-13285.
2. Notice of the application for transfer was published on November 19, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 8, 2020, the Department contacted the applicant's agent by written correspondence to notify the applicant and the applicant's agent of a deficiency in the application. The applicant has indicated they intend to cancel a portion of Certificate 67776 upon issuance of a Final Order approving T-13285, as the place of use is layered with the "FROM" lands under Certificate 42462. An affidavit for the voluntary cancellation of a

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.

portion of a water right certificate was not included with the application. The Department requested that the deficiency be resolved by February 10, 2020.

4. On February 4, 2020, the applicant's agent requested additional time to resolve the deficiency. The Department requested that the deficiency be resolved by March 6, 2020.
5. On March 9, 2020, the Department contacted the agent as a response had not been received by the deadline of March 6, 2020. The Department requested that the deficiency be resolved by March 20, 2020.
6. On March 19, 2020, the agent requested additional time to resolve the deficiency, as the applicant was coordinating with the Burnt River Irrigation District on the partial cancellation.
7. On April 10, 2020, the agent submitted an affidavit for the voluntary cancellation of a portion of water right certificate 67776, resolving the deficiency.
8. On April 30, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13285 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 1, 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.
9. The portion of the right to be transferred is as follows:

**Certificate:** 42462 in the name of OREGON STATE HIGHWAY COMMISSION  
(perfected under Permit G-3775)

**Use:** IRRIGATION of 2.5 ACRES

**Priority Date:** AUGUST 4, 1967

**Rate:** 0.03 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 for each acre irrigated and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year; and shall be further limited to appropriation of water only to the extent that it does not impair or substantially interfere with existing surface water rights of others.

**Source:** A WELL a tributary of BURNT RIVER

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	44 E	WM	30	SE NE	WELL 1 - 2230 FEET SOUTH AND 270 FEET WEST FROM THE NE CORNER OF SECTION 30

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	44 E	WM	29	SW NW	0.1
12 S	44 E	WM	29	NW SW	0.7
12 S	44 E	WM	30	SE NE	1.2
12 S	44 E	WM	30	NE SE	0.5
Total					2.5

10. Transfer Application T-13285 proposes to change the character of use to commercial use.

11. Transfer Application T-13285 also proposes to change the place of use of the right to:

COMMERCIAL USE					
Twp	Rng	Mer	Sec	Q-Q	
12 S	44 E	WM	29	SW NW	
12 S	44 E	WM	29	NW SW	
12 S	44 E	WM	30	SE NE	
12 S	44 E	WM	30	NE SE	

12. Burnt River (F) Decree specifies the irrigation season as being April 1 through October 1.

13. The total volume of water that may be diverted for commercial use, as conditioned, is 7.5 Acre-Feet (AF) ( $3.0 \times 2.5 = 7.5$ ) during the period of April 1 through October 1.

***Transfer Review Criteria (OAR 690-380-4010)***

14. 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.

15. A pump, pipeline, and sprinkler system 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-13285.

16. The proposed change, as conditioned, would not result in enlargement of the right.

17. The proposed change, as conditioned, would not result in injury to other water rights.

18. All other application requirements are met.

***Partial Cancellation of a Water Right***

19. On April 10, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Katie Hubler of the Oregon Department of Transportation. The right to be cancelled is as follows:

**Certificate:** 67776 in the name of OREGON DEPARTMENT OF TRANSPORTATION  
(perfected under Permit S-50712)

**Use:** IRRIGATION of 2.5 ACRES

**Priority Date:** AUGUST 5, 1988

**Rate:** 0.06 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, is limited to a diversion of ONE-FORTIETH of one cubic foot per second (or its equivalent) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

**Source:** BURNT RIVER, a tributary of the SNAKE RIVER AND WATER STORED IN UNITY RESERVOIR, CONSTRUCTED UNDER PERMIT R-176

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
12 S	44 E	WM	30	SE NE	2265 FEET SOUTH AND 900 FEET WEST FROM THE NE CORNER OF SECTION 30

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
12 S	44 E	WM	29	SW NW	0.1
12 S	44 E	WM	29	NW SW	0.7
12 S	44 E	WM	30	SE NE	1.2
12 S	44 E	WM	30	NE SE	0.5
Total					2.5

**Determination and Proposed Action**

The change in place of use and change in character of use proposed in Transfer Application T-13285 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned right will be cancelled.

*If Transfer Application T-13285 is approved, the final order will include the following:*

- 1. The changes in place of use and character of use proposed in Transfer Application T-13285 are approved. The portion of the right that has been abandoned is cancelled.*
- 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 42462 and any related decree.*
- 3. Water right Certificates 42462 and 67776 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer and partial cancellation.*
- 4. 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.*
5. *The former place of use of the transferred right shall no longer receive water under the right.*
6. *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.*
7. *The use of water under the proposed commercial use shall be limited to a rate of diversion of 0.03 cubic foot per second and further limited to a total quantity of water diverted of 7.5 acre-feet during the time period of April 1 through October 1.*
8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on

**JUL 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 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 servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.



**Oregon**  
Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

July 30, 2020

OREGON DEPARTMENT OF TRANSPORTATION

ATTN: KATIE HUBLER

200 HAWTHORNE AVE SE, SUITE B240

SALEM, OR 97301

SUBJECT: Water Right Transfer Application T-13285

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13285. 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 Baker City 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 last date of newspaper publication.

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,



Corey Courchane  
Transfer Specialist  
Transfer and Conservation Section

cc: T-13285  
Marcy J. Osborn, District 8 Watermaster (*via e-mail*)  
Kimberly Grigsby, Agent for the applicant (*via e-mail*)

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