



**Oregon**  
Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

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November 3, 2020

SUNNYSIDE DAIRY, LLC  
ROSALIO BRAMBILA, MANAGER  
4581 MAPLE GROVE RD  
SUNNYSIDE, WA 98944

SUBJECT: Water Right Transfer Application T-13241

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13241. 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 Burns Times 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,

A handwritten signature in blue ink, appearing to read "Corey Courchane". The signature is fluid and cursive, with a long horizontal stroke at the end.

Corey Courchane  
Transfer Specialist  
Transfer and Conservation Section

cc: T-13241  
J R. Johnson, District 10 Watermaster *(via e-mail)*  
Molly Reid, Agent for the applicant *(via e-mail)*  
Ben McKenna, Commenter

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13241, Harney County	)	PROPOSING APPROVAL FOR
	)	ADDITIONAL POINTS OF
	)	APPROPRIATION

**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.

**Applicant**

SUNNYSIDE DAIRY, LLC  
ROSALIO BRAMBILA, MANAGER  
4581 MAPLE GROVE RD  
SUNNYSIDE, WA 98944

**Findings of Fact**

1. On August 15, 2019, SUNNYSIDE DAIRY, LLC, ROSALIO BRAMBILA, MANAGER filed an application for additional points of appropriation under Certificate 93380. The Department assigned the application number T-13241.
2. Notice of the application for transfer was published on August 27, 2019, pursuant to OAR 690-380-4000. Two comments were filed timely in response to the notice, which raised the issue of water availability.
3. The issue raised by the commenter does not address the criteria for review of a water right transfer as per OAR 690-380-4010 and approval of a transfer application under OAR 690-380-5000. The comment described in Finding of Fact (FOF) 2 raises a public interest issue. Under Oregon Law, water right transfers are not subject to a public interest review. Rather the statutory basis for approving a water right transfer application is relatively narrow and confined to the Department finding or determining:
  - a) The water right proposed for transfer is a water use subject to transfer;

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.
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- b) The portion of the water right proposed for transfer is not cancelled due to forfeiture for non-use pursuant to ORS 540.610;
  - c) The proposed transfer would not result in enlargement of the water right proposed for transfer; and
  - d) The proposed transfer would not result in injury to other water rights.
4. On August 18, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13241 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 18, 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.
5. The right to be transferred is as follows:

**Certificate:** 93380 in the name of SUNNYSIDE DAIRY LLC (perfected under Permit G-16499)

**Use:** IRRIGATION of 250.4 ACRES

**Priority Date:** JUNE 17, 2008

**Rate:** 2.9 CUBIC FEET PER SECOND (CFS), FURTHER LIMITED TO NO MORE THAN 1.9 CFS FROM EACH WELL, IN ANY COMBINATION, NOT TO EXCEED A TOTAL OF 2.9 CFS

**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-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Period of Use:** MARCH 1 THROUGH OCTOBER 31

**Source:** NORTH WELL (WELL 1) AND SOUTH WELL (WELL 2) in HOT SPRINGS SLOUGH BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	33 E	WM	3	SW NW	NORTH WELL (WELL 1) - 3155 FEET NORTH AND 165 FEET EAST FROM THE SW CORNER OF SECTION 3
24 S	33 E	WM	3	SW SW	SOUTH WELL (WELL 2) - 885 FEET NORTH AND 90 FEET EAST FROM THE SW CORNER OF SECTION 3

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
24 S	33 E	WM	3	NE NW	3	31.3
24 S	33 E	WM	3	NW NW	4	31.3
24 S	33 E	WM	3	SW NW		31.3
24 S	33 E	WM	3	SE NW		31.3
24 S	33 E	WM	3	NE SW		31.3
24 S	33 E	WM	3	NW SW		31.3

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
24 S	33 E	WM	3	SW SW		31.3
24 S	33 E	WM	3	SE SW		31.3
Total						250.4

6. Transfer Application T-13241 proposes additional points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximated distance from original points of appropriation in miles (mi.)	
24 S	33 E	WM	3	NW NW	WELL 1-R (NORTH REPLACEMENT) - 4280 FEET NORTH AND 24 FEET EAST FROM THE SW CORNER OF SECTION 3	WELL 1	WELL 2
						0.2 mi.	0.6 mi.
24 S	33 E	WM	3	SW NW	WELL 3 (MIDDLE) - 2918 FEET NORTH AND 92 FEET EAST FROM THE SW CORNER OF SECTION 3	0.1 mi.	0.4 mi.

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

7. 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.
8. 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-13241.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.
11. All other application requirements are met.

**Determination and Proposed Action**

The additional points of appropriation proposed in Transfer Application T-13241 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

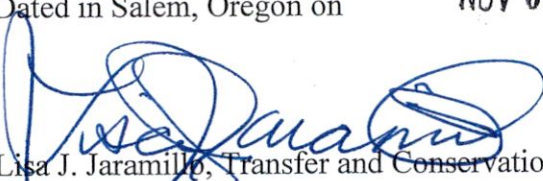
*If Transfer Application T-13241 is approved, the final order will include the following:*

1. *The additional points of appropriation proposed in Transfer Application T-13241 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 Certificate 93380 and any related decree.*

3. *Water right Certificate 93380 is cancelled.*
4. *The quantity of water diverted at the new additional points of appropriation (Well 1-R (North Replacement) and Well 3 (Middle)), together with that diverted at the original points of appropriation (North Well (Well 1) and South Well (Well 2)), shall not exceed the quantity of water lawfully available at the original points of appropriation (North Well (Well 1) and South Well (Well 2)).*
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 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.*
6. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
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

NOV 03 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.