

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13404, Malheur County	)	PROPOSING DENIAL OF
	)	ADDITIONAL POINTS OF
	)	DIVERSION AND A 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**

CHRISTOPHER JAMES RAY AND ANNA R. RAY  
6144 MOLTHAN RANCH RD  
IRONSIDE, OR 97908

**Findings of Fact**

1. On April 6, 2020, CHRISTOPHER JAMES RAY AND ANNA R. RAY filed an application to change the places of use under Certificates 33312 and 56243, and for additional points of diversion and to change the places of use under Certificates 48389 and 56242. The Department assigned the application number T-13404.
2. Notice of the application for transfer was published on April 28, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 10, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-13404 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 11, 2021, for the applicant to respond.
4. On December 29, 2020, the Department identified a condition requiring a headgate was not included in the draft Preliminary Determination issued on December 10, 2020. The Department determined that a revised draft Preliminary Determination should be issued.

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.

5. On December 10, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-13404 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of January 11, 2021, for the applicants to respond.
6. On December 29, 2020, the Department determined a revised draft Preliminary Determination should be issued. Based on the Watermaster's review, installation of a headgate should have been included as a condition. This condition was not included in the draft Preliminary Determination issued on December 10, 2020.
7. On January 28, 2021, the Department mailed a copy of the revised draft Preliminary Determination proposing to deny Transfer Application T-13404 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 1, 2021, for the applicants to respond. The applicants 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.

8. The first right to be transferred is as follows:

**Certificate:** 33312 in the name of RAY DUNCAN (perfected under Permit G-2175)  
**Use:** IRRIGATION of 104.7 ACRES  
**Priority Date:** JUNE 18, 1962  
**Rate:** 1.31 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-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.  
**Source:** WELL NO. 2, a tributary of WILLOW CREEK, (MALHEUR RIVER)

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	39 E	WM	32	NE NE	1300 FEET SOUTH AND 525 FEET WEST FROM THE NE CORNER OF SECTION 32

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	39 E	WM	28	SW NE	9.3
14 S	39 E	WM	28	NE SW	2.1
14 S	39 E	WM	28	SE SW	16.8
14 S	39 E	WM	28	NW SE	37.8
14 S	39 E	WM	28	SW SE	20.0
14 S	39 E	WM	33	NW NE	1.2
14 S	39 E	WM	33	NE NW	17.5
Total					104.7

9. Transfer Application T-13404 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	39 E	WM	27	NW SW	0.3
14 S	39 E	WM	27	SW SW	0.1
14 S	39 E	WM	28	NE SE	32.7
14 S	39 E	WM	28	NW SE	23.9
14 S	39 E	WM	28	SW SE	20.3
14 S	39 E	WM	28	SE SE	27.4
Total					104.7

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

**Certificate:** 48389 in the name of RAYMOND M. AND V. FERNE DUNCAN  
(perfected under Permit S-36682)

**Use:** SUPPLEMENTAL IRRIGATION of 104.7 ACRES

**Priority Date:** FEBRUARY 16, 1972

**Rate:** 1.60 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 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, provided further that although declared herein to be for supplemental irrigation the right allowed may, in the interest of conserving the ground water supplies, be exercised at times when water is available in the ground water supply provided that the total quantity diverted from all sources of supply does not exceed the limitation allowed herein.

**Source:** SOUTH FORK WILLOW CREEK, a tributary of WILLOW CREEK

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	39 E	WM	28	SW NW	POD 1 - 2670 FEET NORTH AND 980 FEET EAST FROM THE SW CORNER OF SECTION 28

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	39 E	WM	28	SW NE	9.3
14 S	39 E	WM	28	NE SW	2.1
14 S	39 E	WM	28	SE SW	16.8
14 S	39 E	WM	28	NW SE	37.8
14 S	39 E	WM	28	SW SE	20.0
14 S	39 E	WM	33	NW NE	1.2
14 S	39 E	WM	33	NE NW	17.5
Total					104.7

11. Transfer Application T-13404 proposes an additional point of diversion approximately 1.5 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	39 E	WM	32	NW SE	POD 3 - 540 FEET SOUTH AND 1400 FEET WEST FROM THE E1/4 CORNER OF SECTION 32

12. Transfer Application T-13404 also proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	39 E	WM	27	NW SW	0.3
14 S	39 E	WM	27	SW SW	0.1
14 S	39 E	WM	28	NE SE	32.7
14 S	39 E	WM	28	NW SE	23.9
14 S	39 E	WM	28	SW SE	20.3
14 S	39 E	WM	28	SE SE	27.4
Total					104.7

13. The third right to be transferred is as follows:

**Certificate:** 56242 in the name of RAYMOND M. AND V. FERNE DUNCAN  
(perfected under Permit S-46371)

**Use:** IRRIGATION of 15.2 ACRES

**Priority Date:** FEBRUARY 9, 1981

**Rate:** 0.38 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-FORTIETH 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** SOUTH FORK WILLOW CREEK, a tributary of WILLOW CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	39 E	WM	28	SW NW	POD 2 - 2650 FEET NORTH AND 915 FEET EAST FROM THE SW CORNER OF SECTION 28

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	39 E	WM	28	SW NE	1.2
14 S	39 E	WM	28	SE NE	4.4
14 S	39 E	WM	28	NE SW	0.3
14 S	39 E	WM	28	SE SW	2.4
14 S	39 E	WM	28	NE SE	3.2
14 S	39 E	WM	28	NW SE	0.2
14 S	39 E	WM	28	SW SE	1.6
14 S	39 E	WM	33	NW NE	1.6
14 S	39 E	WM	33	NE NW	0.3
Total					15.2

14. Transfer Application T-13404 proposes an additional point of diversion approximately 1.5 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	39 E	WM	32	NW SE	POD 3 - 540 FEET SOUTH AND 1400 FEET WEST FROM THE E1/4 CORNER OF SECTION 32

15. Transfer Application T-13404 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	39 E	WM	28	SW SW	8.2
14 S	39 E	WM	33	NW NW	4.7
14 S	39 E	WM	33	SW NW	2.3
Total					15.2

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

**Certificate:** 56243 in the name of RAYMOND M. DUNCAN (perfected under Permit G-7418)

**Use:** SUPPLEMENTAL IRRIGATION of 100.8 ACRES

**Priority Date:** APRIL 6, 1977

**Rate:** 0.34 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL, a tributary of SOUTH FORK WILLOW CREEK

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	39 E	WM	28	SW SW	1050 FEET EAST FROM THE SW CORNER OF SECTION 28

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	39 E	WM	28	SW NE	9.3
14 S	39 E	WM	28	NE SW	2.1
14 S	39 E	WM	28	SE SW	16.8
14 S	39 E	WM	28	NW SE	36.6
14 S	39 E	WM	28	SW SE	20.0
14 S	39 E	WM	33	NW NE	1.2
14 S	39 E	WM	33	NE NW	14.8
Total					100.8

17. Transfer Application T-13404 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	39 E	WM	27	NW SW	0.1
14 S	39 E	WM	28	NE SE	31.7
14 S	39 E	WM	28	NW SE	23.0
14 S	39 E	WM	28	SW SE	19.5
14 S	39 E	WM	28	SE SE	26.5
Total					100.8

18. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary 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. This diversion may be eligible for screening cost share funds.

***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-13404.

21. The proposed changes would not result in enlargement of the rights.

22. An instream water right, Certificate 73354, exists for the reach of the river in which the additional points of diversion would be moved upstream, and the streamflow within the reach are frequently below the levels allocated under the instream water right. Thus, the instream water right would be injured as a result of the proposed additional points of diversion.

23. All other application requirements are met.

**Determination and Proposed Action**

The additional points of diversion and changes in place of use proposed in Transfer Application T-13404 appear to be **NOT** consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. The Department has determined that injury will occur to Instream Water Right Certificate 73354, due to the additional points of diversion. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be denied.

*If the transfer is approved on the recommendation of the Oregon Department of Fish and Wildlife (ODFW) and Oregon Department of Environmental Quality (ODEQ) to consent to the injury, the change in subsequent use of water shall be subject to any conditions identified by ODFW and ODEQ as necessary to ensure that the transfer results in net benefits to the resource and to the following conditions:*

- 1. The additional points of diversion and change in places of use proposed in Transfer Application T-13404 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 33312, 48389, 56242, and 56243, and any related decree.*
- 3. Water right Certificates 33312, 48389, 56242, and 56243 are cancelled. A new certificate will be issued describing that portion of Certificate 56243 not affected by this transfer.*
- 4. The quantity of water diverted at the new additional points of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.*
- 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 diversion (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. Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.*
- 7. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*

8. *The former places of use of the transferred rights shall no longer receive water under the rights.*
9. *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 changes and full beneficial use of the water.*
10. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on

**MAR 18 2021**

  
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

March 18 2021

CHRISTOPHER JAMES RAY AND ANNA R. RAY  
6144 MOLTHAN RANCH RD  
IRONSIDE, OR 97908

SUBJECT: Water Right Transfer Application T-13404

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department has concluded that approval of the change in point of diversion proposed in T-13404 would result in injury to instream water right 73354. Consistent with your request that we seek a recommendation from the Oregon Department of Fish and Wildlife (ODFW) and the Oregon Department of Environmental Quality (DEQ) on whether we should consent to the injury to the instream water right, we are proceeding with that process concurrently with issuance of the preliminary determination.

The Water Resources Department holds instream water rights in trust for the benefit of the people of Oregon. Under ORS 540.530(c), we may approve the transfer only if the agency that requested the instream water right concludes that the changes proposed will result in net benefits to the resources protected by the instream water right, and recommends that we consent to the injury of the right. Please contact the agency staff person to whom the agency review letter has been sent, to discuss whether you may be able to assist in providing information needed for the analysis.

After we have received recommendations from the ODFW and DEQ on whether to consent to the injury, provided no protests have been filed, we will issue an order either:

- Approving the transfer with conditions, if any, identified in the agency recommendations as necessary to ensure that the change will result in net benefits, or
- Reaffirming our decision that the instream water right would be injured and denying the transfer.

The timing for issuance of the order will depend on the availability of information needed by ODFW and DEQ to perform the net benefits analysis upon which their recommendation must be based, and the time necessary to allow public review and comment on the recommendation. You are not authorized to use water from the proposed points of diversion pending a final decision by the Department on your transfer application.

A public notice is being published in the Department's weekly publication and in the Malheur Enterprise 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.

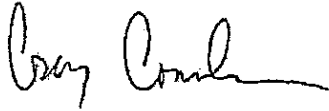
If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

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 black 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: Transfer Application file T-13404  
Jered Hoshaw, District 9 Watermaster (*via e-mail*)  
Nancy L. Rorick, Agent (*via e-mail*)

enc