

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13433, Malheur County	)	PROPOSING APPROVAL FOR AN
	)	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**

1. 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.

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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4. 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

5. 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

6. 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)]***

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 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.
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 point of diversion proposed in Transfer Application T-13433 appears 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-13433 is approved, the final order will include the following:*

1. *The additional point of diversion proposed in Transfer Application T-13433 is 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 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

MAR 24 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 24, 2021

DARYN BUNDTROCK  
PO BOX 773  
ONTARIO, OR 97914

**SUBJECT:** Water Right Transfer Application T-13433

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13433. 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 Ontario Argus Observer 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.

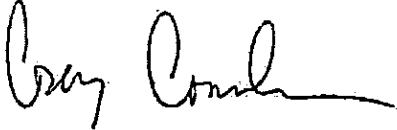
If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

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.

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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: T-13433  
Jered L. Hoshaw, District 9 Watermaster (*via e-mail*)

encs