

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13756, Harney County)	PROPOSING APPROVAL OF CHANGES IN
)	POINTS OF APPROPRIATION AND PLACES
)	OF USE

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 April 20, 2015, the Department issued a Final Order (Special Order Volume 95, Page 937), approving a temporary change in place of use and points of appropriation under Certificates 84202 and 89855 for a period of 5 years.
2. On March 26, 2020, the Department issued a Final Order (Special Order Volume 116, Page 353), approving a temporary change in place of use and points of appropriation under Certificates 84202 and 89855 for a period of 5 years.
3. On June 17, 2021, SUNNYSIDE DAIRY, LLC (Sunnyside), ROSALIO BRAMBILA, MANAGER, filed an application to change the points of appropriation and to change the places of use under Certificates 84202 and 89855. The Department assigned the application number T-13756.

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.

4. Notice of the application for transfer was published on July 13, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
5. On November 17, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-13756 to the applicants. The Department's Groundwater Section determined that the proposed changes would interfere substantially with exempt use groundwater users, and that the proposed wells are within, near, or surrounded by, an area of observed groundwater level decline. The draft Preliminary Determination cover letter set forth a deadline of December 17, 2021, for the applicants to respond.
6. On December 16, 2021, the Department received correspondence from Schwabe, Williamson & Wyatt (Schwabe), Attorney, on behalf of the applicant. Schwabe indicated that the Department's Groundwater Section was applying the wrong legal standard in determining injury. Schwabe also acknowledged that Sunnyside had been using water on the proposed "TO" lands under Temporary Transfer Applications T-11985 and T-13199 for seven consecutive irrigation seasons. Schwabe requested the Department to address the issues identified and conduct a proper injury review.
7. On December 24, 2021, the Department received a report of ownership from Schwabe, however, an Affidavit of Consent by Deeded Landowner would be needed, due to a small portion of the place of use extending onto a neighbor's property.
8. On January 3, 2022, the applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
9. On July 31, 2022, the Department's Groundwater Section completed a re-review of the proposed points of appropriation and determined that injury or enlargement would not occur.
10. On August 5, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13756 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 6, 2022, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.

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

Certificate: 84202 in the name of JERRY L. RANK AND GAYLA ANN RANK (perfected under Permit G-12027)
Use: IRRIGATION of 182.6 ACRES
Priority Date: APRIL 23, 1993
Rate: 2.28 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, 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: A WELL in the HOT SPRINGS SLOUGH BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
24 S	34 E	WM	30	SW SW	4	WELL 8 - 1310 FEET NORTH AND 153 FEET EAST FROM THE SW CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
24 S	34 E	WM	30	NE SW		30.8
24 S	34 E	WM	30	NW SW	3	27.2
24 S	34 E	WM	30	SW SW	4	29.2
24 S	34 E	WM	30	SE SW		35.2
24 S	34 E	WM	30	NW SE		33.9
24 S	34 E	WM	30	SW SE		24.1
24 S	34 E	WM	31	NW NE		1.4
24 S	34 E	WM	31	NE NW		0.6
24 S	34 E	WM	31	NW NW	1	0.2
TOTAL						182.6

12. Transfer Application T-13756 proposes to move the authorized points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from Authorized Point of Appropriation in Miles (mi.)
23 S	33 E	WM	33	SE SE	WELL 7 (HARN 621) - 80 FEET NORTH AND 400 FEET WEST FROM THE SE CORNER OF SECTION 33	5.66 mi.
23 S	33 E	WM	34	NW NW	WELL 6 (HARN 52027) - 25 FEET SOUTH AND 285 FEET EAST FROM THE NW CORNER OF SECTION 34	6.43 mi.

13. Transfer Application T-13756 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
23 S	33 E	WM	33	NE SE	5901	30.9
23 S	33 E	WM	33	SE SE	5901	29.3
23 S	33 E	WM	33	SE SE	5900	1.4
23 S	33 E	WM	34	NE SW	5900	30.8
23 S	33 E	WM	34	NW SW	5900	29.8
23 S	33 E	WM	34	SW SW	5900	29.8
23 S	33 E	WM	34	SE SW	5900	30.6
TOTAL						182.6

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

Certificate: 89855 in the name of SUNNYSIDE DAIRY LLC (perfected under Permit G-144)

Use: IRRIGATION of 300.8 ACRES

Priority Date: FEBRUARY 14, 1956

Rate: 3.76 CUBIC FEET PER SECOND (CFS), BEING 0.94 CFS FROM WELL 1, 0.94 CFS FROM WELL 2, 0.94 CFS FROM WELL 3, 0.16 CFS FROM WELL 4, AND 0.78 CFS FROM WELL 5

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.

Source: FIVE ROSSBERG WELLS, in the MALHEUR LAKE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	34 E	WM	31	SW NE	WELL 4 - 3480 FEET NORTH AND 2660 FEET EAST FROM THE SW CORNER OF SECTION 31
24 S	34 E	WM	31	NE NW	WELL 5 - 3950 FEET NORTH AND 1320 FEET EAST FROM THE SW CORNER OF SECTION 31
24 S	34 E	WM	31	NW SW	WELL 3 - 1410 FEET NORTH AND 1020 FEET EAST FROM THE SW CORNER OF SECTION 31
24 S	34 E	WM	31	SE SE	WELL 1 - 780 FEET NORTH AND 170 FEET WEST FROM THE SE CORNER OF SECTION 31
24 S	34 E	WM	31	SE SE	WELL 2 - 1260 FEET NORTH AND 60 FEET WEST FROM THE SE CORNER OF SECTION 31

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
24 S	34 E	WM	31	NE NW		35.9
24 S	34 E	WM	31	NW NW	1	37.2
24 S	34 E	WM	31	SW NW	2	37.0
24 S	34 E	WM	31	SE NW		38.5
TOTAL						148.6

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
24 S	34 E	WM	31	NE SW		39.2
24 S	34 E	WM	31	NW SW	3	36.5
24 S	34 E	WM	31	SW SW	4	36.9
24 S	34 E	WM	31	SE SW		39.6
TOTAL						152.2

15. Transfer Application T-13756 proposes to move the authorized points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from Authorized Points of Appropriation in Miles (mi.)				
						WELL 1	WELL 2	WELL 3	WELL 4	WELL 5
23 S	33 E	WM	33	SE SE	WELL 7 (HARN 621) - 80 FEET NORTH AND 400 FEET WEST FROM THE SE CORNER OF SECTION 33	7.14 mi.	7.05 mi.	6.63 mi.	6.50 mi.	6.26 mi.
23 S	33 E	WM	34	NW NW	WELL 6 (HARN 52027) - 25 FEET SOUTH AND 285 FEET EAST FROM THE NW CORNER OF SECTION 34	7.92 mi.	7.81 mi.	7.45 mi.	7.27 mi.	7.02 mi.

16. Transfer Application T-13756 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	33 E	WM	33	NE NE	31.3
23 S	33 E	WM	33	NW NE	30.0
23 S	33 E	WM	33	SW NE	29.4
23 S	33 E	WM	33	SE NE	30.6
23 S	33 E	WM	33	NW SE	30.0
23 S	33 E	WM	33	SW SE	29.8
23 S	33 E	WM	34	NE NW	32.8
23 S	33 E	WM	34	NW NW	31.0
23 S	33 E	WM	34	SW NW	27.1
23 S	3E E	WM	34	SE NW	28.8
TOTAL					300.8

Transfer Review Criteria (OAR 690-380-4010)

17. 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.
18. 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-13756.
19. The proposed changes would not result in enlargement of the rights.
20. The proposed changes would not result in injury to other water rights.
21. Certificate 84202 contains the following decline and interference condition:

Use of water from the well(s) shall not be allowed if well(s) displays an (A) average water level decline of 3 or more feet per year for 5 consecutive years; or (B) a water level decline of 15 or more feet in fewer than 5 consecutive years; or (C) a water level decline of 25 or more feet; or (D) a hydraulic interference decline of 25 or more feet in any neighboring well with senior priority which provides water for an authorized use.

The Water Resources Department has determined that the initial water level in the well(s) is those of the initial March report. That is the level from which the cited declines in (A), (B) and (C) above will be referenced. The reference level is 51.5 below ground surface.

22. On July 13, 2022, the Department's Groundwater Section determined the reference level for the proposed "TO" wells, under Certificate 84202, shall be the first March measurement after water use began under the first temporary transfer T-11985. The reference levels are 37.10 feet below land surface (BLSD) for Well 6 (HARN 52027) and 44.07 feet BLSD for Well 7 (HARN 621), as measured on March 21, 2016.
23. All other application requirements are met.

Determination and Proposed Action

The changes in points of appropriation and changes in place of use proposed in Transfer Application T-13756 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-13756 is approved, the final order will include the following:

- 1. The changes in points of appropriation and changes in place of use proposed in Transfer Application T-13756 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 84202 and 89855, and any related decree.*
- 3. Water right Certificates 84202 and 89855 are cancelled.*
- 4. Under Certificate 84202, the quantity of water diverted at the new points of appropriation (Well 6 and Well 7), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 8).*
- 5. Under Certificate 89855, the quantity of water diverted at the new points of appropriation (Well 6 and Well 7), shall not exceed the quantity of water lawfully available at the original points of appropriation (Well 1, Well 2, Well 3, Well 4, and Well 5).*
- 6. Under Certificate 84202, use of water from the well(s) shall not be allowed if well(s) displays an (A) average water level decline of 3 or more feet per year for 5 consecutive years; or (B) a water level decline of 15 or more feet in fewer than 5 consecutive years; or (C) a water level decline of 25 or more feet; or (D) a hydraulic interference decline of 25 or more feet in any neighboring well with senior priority which provides water for an authorized use.*

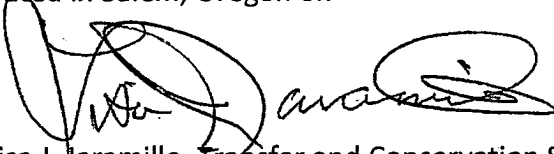
The Water Resources Department has determined that the initial water level in the well(s) is those of the March 21, 2016, report. That is the level from which the cited declines in (A), (B) and (C) above will be referenced. The reference levels are 37.10 feet below land surface (BLSD) for Well 6 (HARN 52027) and 44.07 feet BLSD for Well 7 (HARN 621).

- 7. 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.*
- 8. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
- 9. The former places of use of the transferred rights shall no longer receive water under the rights.*

10. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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.
11. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated in Salem, Oregon on

SEP 22 2022



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by: Corey Courchane. If you have any questions about the information in this document, you may reach me at 503-979-3917 or corey.a.courchane@water.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.

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

September 22, 2022

VIA CERTIFIED MAIL AND E-MAIL

Applicant

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

SUBJECT: Water Right Transfer Application T-13756

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13756. 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.

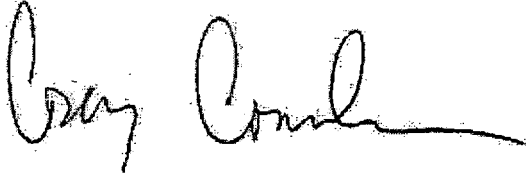
A public notice is being published in the Department's weekly publication and in the Burns Times Herald newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the 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.

Please do not hesitate to contact me, at corey.a.courchane@water.oregon.gov or (503) 979-3917, 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
Allocation of Conserved Water
Transfer and Conservation Section

cc: Transfer Application file T-13756
District 10 Watermaster (*via e-mail*)
Molly Reid, Agent for the applicant (*via e-mail*)
Shonee Langford, Attorney (*via e-mail*)

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