



Oregon

Tina Kotek, Governor

Water Resources Department

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February 21, 2023

VIA CERTIFIED MAIL AND E-MAIL

Applicant

DAN MCCARTY
27471 MCCARTY RANCH LANE
ECHO, OR 97826

SUBJECT: Water Right Transfer Application T-13632

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13632. 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 East Oregonian 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.

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 blue 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-13632
Gregory M. Silbernagel, District 5 Watermaster (*via e-mail*)
Molly Reid, Agent for the applicant (*via e-mail*)

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

In the Matter of Transfer Application)
T-13632, Umatilla County)
)
)
)
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PRELIMINARY DETERMINATION
PROPOSING APPROVAL FOR AN
ADDITIONAL POINT OF APPROPRIATION
AND A CHANGE IN POINT 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.

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Findings of Fact

1. On March 1, 2021, DAN MCCARTY filed an application for an additional point of appropriation under Certificate 86212 and to change the point of appropriation under Certificate 86211. The Department assigned the application number T-13632.
2. Notice of the application for transfer was published on March 9, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 27, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13632 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 28, 2022, 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.

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

Certificate: 86211 in the name of REW RANCHES INC. by LAWRENCE B. REW (perfected under Permit G-5335)
Use: IRRIGATION of 65.2 ACRES
Priority Date: JULY 19, 1974
Rate: 0.13 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. The irrigation season used herein shall include any time of each year that water can be put to beneficial use by irrigation, either for immediate crop growth or for forecast requirements to raise the soil moisture to field capacity in the soil profile to be utilized by plant growth in the subsequent growing season, provided further that in the event of a request for change in point of appropriation, an additional point of appropriation, or repair of this well, the quantity of water allowed herein together with the right perfected under Permit G-5337 shall not exceed 2.0 cfs, the capacity of this well system at the time of perfection of this right.
Source: REW WELL #1, in the UMATILLA RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	31 E	WM	30	NW NE	REW WELL #1 - 1070 FEET SOUTH AND 90 FEET EAST FROM THE N1/4 CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	30 E	WM	24	NW SW	39.0
3 N	30 E	WM	24	SW SW	26.2
Total					65.2

5. Transfer Application T-13632 proposes to move the authorized point of appropriation approximately 1.6 miles Northwest from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	30 E	WM	23	SE SE	WELL 2 - 1084 FEET NORTH AND 50 FEET WEST FROM THE SE CORNER OF SECTION 23

6. The portion of the second right to be transferred is as follows:

Certificate: 86212 in the name of M. S. AND SHIRLEY R. TEMPLE (perfected under Permit G-6987)
Use: IRRIGATION of 106.0 ACRES and SUPPLEMENTAL IRRIGATION of 53.0 ACRES

Priority Date: SEPTEMBER 9, 1976

Rate: 0.89 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, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Source: REW WELL, in the STAGE GULCH BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	30 E	WM	23	SE SE	REW WELL - 80 FEET NORTH AND 1090 FEET WEST FROM THE SE CORNER OF SECTION 23

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	30 E	WM	23	NE SE	40.0
3 N	30 E	WM	23	NW SE	39.1
3 N	30 E	WM	23	SW SE	4.8
3 N	30 E	WM	23	SE SE	22.1
Total					106.0

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	30 E	WM	24	NW SW	39.0
3 N	30 E	WM	24	SW SW	14.0
Total					53.0

7. Transfer Application T-13632 proposes an additional point of appropriation approximately 0.3 mile Northeast from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	30 E	WM	23	SE SE	WELL 2 - 1084 FEET NORTH AND 50 FEET WEST FROM THE SE CORNER OF SECTION 23

Transfer Review Criteria (OAR 690-380-4010)

8. 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.
9. 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-13632.

10. The proposed point of appropriation, as conditioned, shall be restricted to the same aquifer.
11. The proposed change would not result in enlargement of the rights.
12. The proposed change, as conditioned, would not result in injury to other water rights.
13. All other application requirements are met.

Determination and Proposed Action

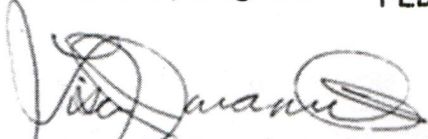
The change in point of appropriation and additional point of appropriation proposed in Transfer Application T-13632 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-13632 is approved, the final order will include the following:

1. *The change in point of appropriation and additional point of appropriation proposed in Transfer Application T-13632 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 86211 and 86212, and any related decree.*
3. *Water right Certificates 86211 and 86212 are cancelled. A new certificate will be issued describing that portion of Certificate 86212 not affected by this transfer.*
4. *Under Certificate 86211, the quantity of water diverted at the new point of appropriation (Well 2), shall not exceed the quantity of water lawfully available at the original point of appropriation (Rew Well #1).*
5. *Under Certificate 86212, the quantity of water diverted at the new additional point of appropriation (Well 2), together with that diverted at the original point of appropriation (Rew Well), shall not exceed the quantity of water lawfully available at the original point of appropriation (Rew Well).*
6. *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.*

7. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
8. *The proposed point of appropriation shall be constructed so as to seal off deep water bearing zones, such as those found in well UMAT 1383 below a depth of 1190 feet.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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 **FEB 22 2023**



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 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.