



# Oregon

Tina Kotek, Governor

## Water Resources Department

North Mall Office Building  
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Salem, OR 97301  
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[www.oregon.gov/owrd](http://www.oregon.gov/owrd)

February <sup>22</sup>, 2023

VIA CERTIFIED MAIL AND E-MAIL

### Applicant

DAN MCCARTY  
27471 MCCARTY RANCH LANE  
ECHO, OR 97826

SUBJECT: Water Right Transfer Application T-13640

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13640. 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.

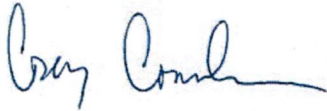
A public notice is being published in the Department's weekly publication and in the East Oregonian newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in 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](mailto: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-13640  
Gregory M. Silbernagel, District 5 Watermaster (*via e-mail*)  
Molly Reid, Agent for the applicant (*via e-mail*)

encs

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13640, Morrow County	)	PROPOSING APPROVAL OF 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**

DAN MCCARTY  
27471 MCCARTY RANCH LANE  
ECHO, OR 97826

**Findings of Fact**

1. On February 25, 2021, DAN MCCARTY filed an application for additional points of appropriation under Certificates 86435, 86436, 95437, and 95438. The Department assigned the application number T-13640.
2. Notice of the application for transfer was published on March 23, 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-13640 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:** 86435 in the name of ERIC ANDERSON (perfected under Permit G-5238)  
**Use:** IRRIGATION of 162.9 ACRES  
**Priority Date:** NOVEMBER 5, 1973  
**Rate:** 2.0 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 a diversion of 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:** A WELL, in the WILLOW CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	24 E	WM	36	NW SE	WELL 1 - 1500 FEET NORTH AND 100 FEET EAST FROM THE S1/4 CORNER OF SECTION 36

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	24 E	WM	35	NE SE	40.0
2 N	24 E	WM	35	SE SE	40.0
2 N	24 E	WM	36	SW NW	15.8
2 N	24 E	WM	36	NW SW	26.0
2 N	24 E	WM	36	SW SW	30.7
2 N	24 E	WM	36	SW SE	4.6
2 N	24 E	WM	36	SE SE	5.8
Total					162.9

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

**Certificate:** 86436 in the name of ERIC ANDERSON (perfected under Permit G-5239)  
**Use:** IRRIGATION of 161.9 ACRES  
**Priority Date:** MARCH 29, 1974  
**Rate:** 2.02 CUBIC FEET PER SECOND FROM WELL 1  
**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 provided the appropriation of water from Well 1 is limited to total diversion of 7.3 cfs for all rights of record established at Well 1 and

shall conform to such reasonable rotation system as may be ordered by the proper state officer.

**Source:** WELL 1, in the WILLOW CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	24 E	WM	36	NW SE	WELL 1 - 1500 FEET NORTH AND 100 FEET EAST FROM THE S1/4 CORNER OF SECTION 36

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	24 E	WM	1	SW SW	0.2
1 N	24 E	WM	2	NE NE	0.3
1 N	24 E	WM	2	NW NE	24.1
1 N	24 E	WM	2	SW NE	22.6
1 N	24 E	WM	2	SE NE	1.1
1 N	24 E	WM	2	NE SE	27.0
1 N	24 E	WM	2	NW SE	24.9
1 N	24 E	WM	2	SW SE	28.3
1 N	24 E	WM	2	SE SE	33.4
Total					161.9

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

**Certificate:** 95437 in the name of ERIC ANDERSON (perfected under Permit G-5238)

**Use:** IRRIGATION of 420.9 ACRES

**Priority Date:** NOVEMBER 5, 1973

**Rate:** 5.26 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 3.0 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:** A WELL, A TRIBUTARY OF WILLOW CREEK

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	24 E	WM	36	NW SE	WELL 1 - 1500 FEET NORTH AND 700 FEET EAST FROM THE S1/4 CORNER OF SECTION 36

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	24 E	WM	36	NE NE	33.2
2 N	24 E	WM	36	NW NE	25.7



IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	24 E	WM	36	SW NE	38.4
2 N	24 E	WM	36	SE NE	29.6
2 N	24 E	WM	36	NE NW	6.0
2 N	24 E	WM	36	NW NW	26.4
2 N	24 E	WM	36	SW NW	19.0
2 N	24 E	WM	36	SE NW	39.4
2 N	24 E	WM	36	NE SW	36.0
2 N	24 E	WM	36	NW SW	1.2
2 N	24 E	WM	36	SW SW	3.3
2 N	24 E	WM	36	SE SW	35.8
2 N	24 E	WM	36	NE SE	34.4
2 N	24 E	WM	36	NW SE	38.3
2 N	24 E	WM	36	SW SE	28.2
2 N	24 E	WM	36	SE SE	26.0
Total					420.9

7. The fourth right to be transferred is as follows:

**Certificate:** 95438 in the name of ERIC ANDERSON (perfected under Permit G-5239)

**Use:** IRRIGATION of 208.6 ACRES

**Priority Date:** MARCH 29, 1974

**Rate:** 2.61 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year provided the appropriation of water from Well 1 is limited to total diversion of 7.3 cfs for all rights of record established at Well 1 and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

**Source:** WELL 1, A TRIBUTARY OF WILLOW CREEK

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	24 E	WM	36	NW SE	WELL 1 - 1500 FEET NORTH AND 100 FEET EAST FROM THE S1/4 CORNER OF SECTION 36

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	24 E	WM	1	NW NW	15.3
1 N	24 E	WM	1	SW NW	27.0
1 N	24 E	WM	1	SE NW	5.5
1 N	24 E	WM	1	NE SW	20.7
1 N	24 E	WM	1	NW SW	39.2

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	24 E	WM	1	SW SW	4.7
1 N	24 E	WM	1	SE SW	0.9
1 N	24 E	WM	2	NE NE	39.5
1 N	24 E	WM	2	NW NE	9.9
1 N	24 E	WM	2	SW NE	7.8
1 N	24 E	WM	2	SE NE	35.1
1 N	24 E	WM	2	NE SE	3.0
Total					208.6

8. Transfer Application T-13640 proposes additional points of appropriation for Certificates 86435, 86436, 95437, and 95438 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance and direction from original point of appropriation in miles (mi.)
2 N	24 E	WM	36	NW SW	WELL 2 - 1515 FEET NORTH AND 1706 FEET WEST FROM THE S1/4 CORNER OF SECTION 36	0.1 mi. SE
2 N	24 E	WM	36	NW SE	WELL 3 - 1267 FEET NORTH AND 747 FEET EAST FROM THE S1/4 CORNER OF SECTION 36	0.3 mi. W

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

9. 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.
10. 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-13640.
11. The proposed change would not result in enlargement of the rights.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.



## Determination and Proposed Action

The additional points of appropriation proposed in Transfer Application T-13640 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.

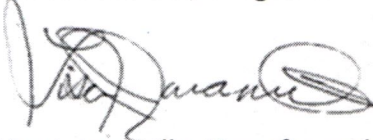
*If Transfer Application T-13640 is approved, the final order will include the following:*

1. *The additional points of appropriation proposed in Transfer Application T-13640 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 86435, 86436, 95437, and 95438, and any related decree.*
3. *Water right Certificates 86435, 86436, 95437, and 95438 are cancelled. A new certificate will be issued describing that portion of Certificate 86436 not affected by this transfer.*
4. *The quantity of water diverted at the new additional points of appropriation (Wells 2 and 3), together with that diverted at the original point of appropriation (Well 1), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 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 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 point of appropriation.*
7. *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 change and full beneficial use of the water.*



8. *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](mailto: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.