

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13704, Marion County	)	PROPOSING APPROVAL OF A CHANGE
	)	FROM SURFACE WATER POINTS OF
	)	DIVERSION TO A GROUNDWATER POINT
	)	OF APPROPRIATION

**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**

THOMAS AND BRENDA FERY  
PO BOX 361  
STAYTON, OR 97383

**Findings of Fact**

1. On May 10, 2021, THOMAS AND BRENDA FERY filed an application to change from surface water points of diversion to a groundwater point of appropriation for a portion of Certificate 45075. The Department assigned the application number T-13704.
2. Notice of the application for transfer was published on May 25, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 6, 2023, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13704 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of October 6, 2023, 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.

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 the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, of this preliminary determination.

4. On September 8, 2023, the applicants requested to extend the date of full beneficial use of the water to October 1, 2026, due to the length in time to secure a well driller.
5. The portion of the right to be transferred is as follows:

**Certificate:** 45075 in the name of STAYTON CANNING COMPANY, COOPERATIVE (perfected under Permit S-38205)

**Use:** IRRIGATION AND SUPPLEMENTAL IRRIGATION OF 75.0 ACRES

**Priority Date:** JANUARY 31, 1975

**Rate:** 0.94 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 a diversion of ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated from direct flow and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from unnamed reservoir constructed under Permit No. R-6170, and Detroit Reservoir constructed under Permit No. R-1625, and is subject to the terms and conditions of contracts No. 14-06-100-8541 and No. 14-06-100-8531 between the Bureau of Reclamation and the applicant, copies of which are in the records of the Water Resources Department.

**Source:** RESERVOIR constructed under Application No. R-52828, Permit No. R-6170, and DETROIT RESERVOIR constructed under Permit No. R-1625, a tributary of SANTIAM RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
9 S	1 W	WM	16	NW SE	2	RESERVOIR - 120 FEET SOUTH AND 420 FEET EAST FROM THE C1/4 CORNER OF SECTION 16
10 S	5 E	WM	7	NW		DETROIT RESERVOIR - NONE GIVEN

**Authorized Place of Use:**

IRRIGATION AND SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
9 S	1 W	WM	16	SW NW		14.3
9 S	1 W	WM	16	SE NW		19.9
9 S	1 W	WM	16	NE SW	3	21.4
9 S	1 W	WM	16	NW SW		19.4
Total						75.0

6. Transfer Application T-13704 proposes to change from surface water points of diversion to a groundwater point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances	Approximate distance downstream from original points of diversion in miles (mi.)	
9 S	1 W	WM	16	NE SW	3	POA 1 (WELL) - 330 FEET SOUTH AND 290 FEET WEST FROM THE C1/4 OF SECTION 16	RESERVOIR	DETROIT RESERVOIR
							0.3 mi.	26.4 mi.

***Transfer Review Criteria [OAR 690-380-0100(14), 690-380-4010(2) and 690-380-2130]***

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 water delivery system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-13704.
9. The water right is subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
10. The proposed point of appropriation meets the requirements of ORS 540.531 and OAR 690-380-2130(2).
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other existing water rights.
13. All other application requirements are met.

**Determination and Proposed Action**

The change from surface water points of diversion to a groundwater point of appropriation proposed in Transfer Application T-13704 appears to be consistent with the requirements of ORS 540.505 to 540.580, OAR 690-380-2130, and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

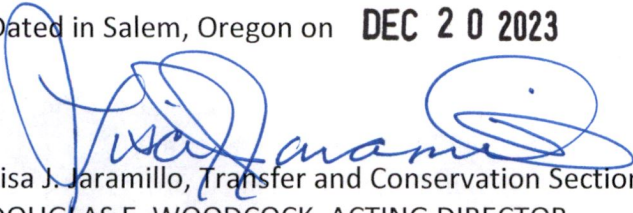
*If Transfer Application T-13704 is approved, the final order will include the following:*

1. *The change from surface water points of diversion to a groundwater point of appropriation proposed in Transfer Application T-13704 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 45075 and any related decree.*
3. *Approval of this transfer application does not constitute nor grant legal access onto or through another person's property for purposes of accessing the new point of appropriation.*
4. *Water right Certificate 45075 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
5. *The quantity of water diverted at the new point of appropriation (POA 1 (Well)), shall not exceed the quantity of water lawfully available at the original points of diversion (Reservoir and Detroit Reservoir).*
6. *The well from which the water is taken under this right shall be constructed so that the use of the well will affect the surface water source similarly to the use of the original authorized points of diversion.*
7. *The use of water under this right shall be subject to regulation consistent with other water rights from the surface water source and to all other applicable conditions and restrictions that existed at the original point of diversion.*
8. *All applicable restrictions that existed at the original points of diversion shall apply to the proposed well.*
9. *The original date of priority shall be retained. However, if within five years after approving the transfer, the Department finds that the transfer results in substantial interference with existing groundwater rights that would not have occurred in the absence of the transfer, the proposed well shall be subordinate to any existing right injured by the transferred water right.*
10. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2026**. 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.*

11. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on **DEC 20 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

Under the provisions of ORS 540.520(6) & (7) and OAR 690-380-4030, within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, any person may file, jointly or severally, a protest expressing opposition of approval of the transfer application and disagreement with this Preliminary Determination or a standing statement in support of this Preliminary Determination. If this Preliminary Determination determines that a change in point of diversion or appropriation would result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050. Protests and standing statements must be received by the Water Resources Department within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later.

Protests must be in writing and received in hard copy form with the appropriate statutory protest filing fee; protests cannot be filed by electronic mail. [OAR 690-002-0025(3) and 690-380-0100(9)]. The protest must include the following:

- The person's name, address, and telephone number;
- All reasonably ascertainable issues and all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue may preclude consideration of the issue during the hearing;
- If you are the applicant, a protest fee of \$480 required by ORS 536.050; and

- If you are not the applicant, a protest fee of \$950 required by ORS 536.050 and proof of service of the protest upon the applicant.

### Requests for Standing

Under the provisions of OAR 690-380-4030(5), the Department shall provide to persons who have filed standing statements as defined under OAR 690-380-0100(11) notice of any differences between the Department's Preliminary Determination and the Final Order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

Requests for standing must be received in the Water Resources Department no later than 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the preliminary determination as issued.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been filed under OAR 690-380-4030. In accordance with OAR 690-380-4200, notice and conduct of the hearing shall:

- Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties stipulate otherwise; and
- If a protest has asserted that a water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

If after hearing the Department issues a proposed Final Order finding that a change in point of diversion or appropriation will result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050 within 15 days of receipt of the proposed order. Notwithstanding 690-002-0175, if the applicant files a notification of intent to pursue approval of the transfer under 690-380-5030 to 690-380-5050, the deadline for filing exceptions to the proposed order shall be 30 days after the Department

provides notice to the parties that the transfer does not meet the requirements of 690-380-5030 to 690-380-5050.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear, or fail to appear at a scheduled hearing, the Director may issue a final order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions, or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 690-137-0555, an agency representative may represent partnerships, corporations, associations, governmental subdivisions or public, or private organizations if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

**Notice Regarding Servicemembers:** Active-duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Will Davidson at 503-507-2749.

If you have questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.

Address any correspondence to: Oregon Water Resources Department, Transfer and Conservation Section, 725 Summer Street NE, Suite A, Salem OR 97301-1266.



# Oregon

Tina Kotek, Governor

## Water Resources Department

North Mall Office Building  
725 Summer St NE, Suite A  
Salem, OR 97301  
Phone 503 986-0900  
Fax 503 986-0904  
[www.oregon.gov/owrd](http://www.oregon.gov/owrd)

December 20, 2023

VIA CERTIFIED MAIL AND E-MAIL

### Applicant

THOMAS AND BRENDA FERY  
PO BOX 361  
STAYTON, OR 97383

SUBJECT: Water Right Transfer Application T-13704

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13704. 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 Scio Tribune 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 the first name "Corey" and last name "Courchane" clearly distinguishable.

Corey Courchane  
Allocation of Conserved Water  
Transfer and Conservation Section

cc: Transfer Application file T-13704  
Gregory J. Wacker, District 16 Watermaster (*via e-mail*)  
William E. McGill, Agent for the applicant (*via e-mail*)

encs