

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-13301, Linn County) A CHANGE IN POINT OF DIVERSION
) AND PARTIAL CANCELLATION OF
) A WATER RIGHT

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

ERIC M. AND LAURA R. POND
39303 PLAGMAN DR.
LEBANON, OR 97355

Findings of Fact

1. On December 6, 2019, ERIC M. AND LAURA R. POND filed an application to change the point of diversion under Certificate 49788. The Department assigned the application number T-13301.
2. Notice of the application for transfer was published on December 17, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 21, 2020, the Agent for the applicant amended the application and submitted an affidavit for the voluntary cancellation of a portion of the right (0.3 acre).
4. On February 18, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13301 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 18, 2021, 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.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

5. On May 11, 2021, the Department issued a Preliminary Determination proposing to approve deny Transfer T-13301 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on May 18, 2021, and in the New Era newspaper on May 19 and 26, 2021 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
6. The right to be transferred is as follows:

Certificate: 49788 in the name of CARL A. PLAGMANN (perfected under Permit S-28481)
Use: IRRIGATION of 7.3 ACRES
Priority Date: NOVEMBER 8, 1962
Rate: 0.089 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: SOUTH SANTIAM RIVER a tributary of SANTIAM RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
12 S	1 W	WM	29	NW NE	57	30 FEET SOUTH AND 2000 FEET WEST FROM THE NE CORNER OF SECTION 29

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
12 S	1 W	WM	20	SE SE	57	2.6
12 S	1 W	WM	29	NE NE	57	4.7
Total:						7.3

7. Transfer Application T-13301 proposes to move the authorized point of diversion approximately 1679.3 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	1 W	WM	29	NE NE	POD 2 - 930 FEET SOUTH AND 580 FEET WEST FROM THE NE CORNER OF SECTION 29

8. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

Partial Cancellation of a Water Right

9. On April 21, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from the applicant. The right to be cancelled is as follows:

Certificate: 49788 in the name of CARL A. PLAGMANN (perfected under Permit S-28481)
Use: IRRIGATION 0.30 ACRE
Priority Date: NOVEMBER 8, 1962
Rate: 0.004 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: SOUTH SANTIAM RIVER, tributary of SANTIAM RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	1 W	WM	29	NW NE	30 FEET SOUTH AND 2000 FEET WEST FROM NE CORNER, SECTION 29

Authorized Place of Use to be Cancelled:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
12 S	1 W	WM	29	NE NE	57	0.30

Transfer Review Criteria [OAR 690-380-4010(2)]

10. 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.
11. A pump, pipeline, and sprinkler system 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-13301.
12. The proposed change as conditioned would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.
14. All other application requirements are met.

Conclusions of Law

The change in point of diversion proposed in Transfer Application T-13301 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000, and the portion of the right abandoned is cancelled.

Now, therefore it is ORDERED:


1. The change in point of diversion proposed in Transfer Application T-13301 is approved, and the portion of the right abandoned is cancelled.
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 49788 and any related decree.
3. Water right Certificate 49788 is cancelled.
4. The quantity of water diverted at the new point of diversion (POD 2), shall not exceed the quantity of water lawfully available at the original point of diversion.
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 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. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

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

JUL 0 8 2021


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

Mailing date: **JUL 0 9 2021**