

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-14040, Washington County) AN ADDITIONAL POINT OF DIVERSION
) AND CHANGE IN PLACE OF USE

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

GEORGE SCHMIDLIN FARMS, LLC
C/O LARRY SCHMIDLIN
43860 NW WOOLEN RD
BANKS, OR 97106

Findings of Fact

1. On June 28, 2022, GEORGE SCHMIDLIN FARMS, LLC filed an application for an additional point of diversion and to change the place of use under Certificate 43721. The Department assigned the application number T-14040.
2. Notice of the application for transfer was published on July 12, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 22, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-14040 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 24, 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.

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

4. On February 3, 2023, the Department issued a Preliminary Determination proposing to approve Transfer T-14040 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 February 7, 2023, and in the Hillsboro Tribune newspaper on February 16 and 23, 2023 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
5. The portion of the right to be transferred is as follows:

Certificate: 43721 in the name of SCHMIDLIN BROTHERS (perfected under Permit S-35015)

Use: IRRIGATION of 40.0 ACRES

Priority Date: MARCH 19, 1970

Rate: 0.50 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 not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.

Source: WEST FORK DAIRY CREEK, a tributary of DAIRY CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	4 W	WM	14	NW SE	700 FEET SOUTH AND 2430 FEET WEST FROM THE E1/4 CORNER OF SECTION 14

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	4 W	WM	14	NE SW	3.9
2 N	4 W	WM	14	NE SE	20.4
2 N	4 W	WM	14	NW SE	15.3
2 N	4 W	WM	14	SE SE	0.4
Total					40.0

6. Transfer Application T-14040 proposes an additional point of diversion approximately 1.03 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	4 W	WM	24	NW SE	POD 2 - 1855 FEET SOUTH AND 1565 FEET EAST FROM THE NW CORNER OF SECTION 24

7. Transfer Application T-14040 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	4 W	WM	24	NW NE	12.2
2 N	4 W	WM	24	SW NE	1.0
2 N	4 W	WM	24	NE NW	26.8
Total					40.0

8. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

9. 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.
10. 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-14040.
11. The proposed changes as conditioned would not result in enlargement of the right.
12. The proposed changes would not result in injury to other water rights.
13. All other application requirements are met.

Determination and Proposed Action

The additional point of diversion and change in place of use proposed in Transfer Application T-14040 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

Now, therefore, it is ORDERED:

1. The additional point of diversion and change in place of use proposed in Transfer Application T-14040 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 Certificate 43721 and any related decree.
3. Water right Certificate 43721 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. The quantity of water diverted at the new of diversion (POD 2), together with that diverted at the original point of diversion, 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 a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
7. The former place of use of the transferred right shall no longer receive water under the right.
8. 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.
9. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on **MAR 23 2023**


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

Mailing date: **MAR 24 2023**