

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-12422, Polk County)	CHANGES IN CHARACTER OF USE
)	AND 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

ROBERT LEROY AND DIAN GRIFFIN
7940 WISTERIA STREET
ANCHORAGE, AK 99502

Agent

DOANN HAMILTON
PACIFIC HYDRO-GEOLOGY, INC.
18487 S. VALLEY VISTA RD.
MULINO, OR 97042

Findings of Fact

1. On July 8, 2016, Robert Leroy and Dian Griffin filed an application to change the character of use under Certificate 41573. The Department assigned the application number T-12422.
2. Notice of the application for transfer was published on July 19, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 17, 2017, the Department contacted the agent for the applicant by written correspondence (e-mail) to notify them of deficiencies in the application. On September 19, 2017, the agent for applicant submitted a revised application map and additional fees for the additional proposed change in place of use. On October 17, 2017, the agent for applicant submitted the associated revised application pages.
4. The proposed place of use change was within the same quarter-quarter as the original right and only modified the footprint of the right.

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 November 1, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12422 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of December 1, 2017, 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.
6. Notice of the change in application for transfer to include both a character of use and place of use changes was published on January 16, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On February 21, 2018, the Department issued a Preliminary Determination proposing to approve Transfer T-12422 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 27, 2018, and in the Polk County Itemizer-Observer newspaper on February 28, and March 7, 2018 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
8. The right to be transferred is as follows:

Certificate: 41573 in the name of JOHN C. AND DOROTHY HEFFLEY (perfected under Permit S-36319)

Use: STOCK

Priority Date: JUNE 28, 1971

Rate: 0.01 CUBIC FOOT PER SECOND (cfs)

Source: AN UNNAMED SPRING, a tributary of the LUCKIAMUTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
9 S	5 W	WM	22	NW SE	60	1350 FEET NORTH AND 1950 FEET WEST FROM THE SE CORNER OF SECTION 22

Authorized Place of Use:

STOCK USE					
Twp	Rng	Mer	Sec	Q - Q	DLC
9 S	5 W	WM	22	NW SE	60

9. Certificate 41573 does not specify the period of allowed use, however, stock use is generally considered a year-round use and is so stated in the Coast Range Sub-Basin of the Willamette Basin program. (OAR 690-502-0100 (2))
10. Transfer Application T-12422 proposes to change the place of use and character of use from stock use to Nursery Use located elsewhere within the quarter quarter on Tax Lot 201 to:

NURSERY USE						
Twp	Rng	Mer	Sec	Q - Q	DLC	Proposed POU
9 S	5 W	WM	22	NW SE	60	2.2 acres (<i>footprint</i>)

11. The new proposed NURSERY USE shall be limited to a rate of not to exceed 0.01 cfs and shall be further limited to a total volume diverted of 7.24 acre feet per year, being 3.29 acre feet per each acre per year during the entire year.

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

12. Evidence was submitted with the application indicating that water has been used within the last five years according to the terms and conditions of the right. A dated aerial photograph of the land to which the right is appurtenant suggests that there has been an extended period of time during which the right was not exercised for stock. Additional pictures were submitted by the applicant documenting equipment related to stock use, but were not dated. However, this and the information in the record is not sufficient to initiate cancellation proceedings under ORS 540.631.
13. A diversion structure and stock equipment 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-12422.
14. The proposed change will not result in enlargement of the right.
15. The proposed change, if properly conditioned, would not result in injury to other water rights.

Conclusions of Law

The changes in place of use and character of use proposed in Transfer Application T-12422 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in place of use and character of use proposed in Transfer Application T-12422 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 41573 and any related decree.
3. Water right Certificate 41573 is cancelled.
4. The proposed Nursery use shall be limited such that:
 - a) The amount of water used for NURSERY OPERATIONS is limited to a rate of diversion of 0.01 cubic foot per second and 3.29 acre-feet per each acre per year.
 - b) For the irrigation of containerized nursery plants, the amount of water diverted is limited to 0.01 cubic foot per second (or its equivalent) and 3.29 acre feet per each acre per year.
 - c) For the irrigation of in-ground nursery plants, the amount of water diverted is limited to 0.01 cubic foot per second (or its equivalent) and 3.29 acre feet per each acre per year.
 - d) For the irrigation of any other crop, the amount of water diverted is limited to 0.01 cubic foot per second (or its equivalent) and 2.5 acre feet per each acre during the irrigation season of each year.
5. The former place of use of the transferred right shall no longer receive water under the right.

6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2019**. 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.
7. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this day APR 13 2018.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing date: APR 16 2018