

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

In the Matter of Transfer Application) FINAL ORDER
T-14258, Clackamas County) APPROVING AN ADDITIONAL POINT 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

WHISKEY HILL PLANTS LLC
PO BOX 1201
CANBY, OR 97013

Findings of Fact

1. On June 6, 2023, Whiskey Hill Plants LLC filed an application for an additional point of appropriation under Certificate 95194. The Department assigned the application number T-14258.
2. Notice of the application for transfer was published on June 13, 2023, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 30, 2023, the Department sent a copy of the draft Preliminary Determination to the applicant, proposing to approve Transfer Application T-14258. The draft Preliminary Determination cover letter gave a deadline of December 30, 2023, 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 12, 2024, the Department issued a Preliminary Determination proposing to approve Transfer Application T-14258 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on February 13, 2024, 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: 95194 in the name of WHISKEY HILL PLANTS LLC (perfected under Permit G-14997)

Use: NURSERY USE on 28.0 ACRES

Priority Date: MAY 15, 2000

Rate: 0.49 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.15 cubic foot per second per acre. For the irrigation of **containerized nursery plants**, the amount of water diverted is limited to ONE-FORTIETH of one cubic foot per second (or its equivalent) and 5.0 acre feet per acre per year. For the irrigation of **in ground nursery plants** the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre per year. The use of water for NURSERY OPERATIONS may be made at any time, during the period of allowed use specified above, that the use is beneficial. For the irrigation of **any other crop**, the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre during the irrigation season of each year.

Period of Use: YEAR ROUND

Source: A WELL in the PUDDING RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 W	WM	1	NE SW	WELL 2 – 1990 FEET NORTH AND 1685 FEET EAST FROM THE SW CORNER OF SECTION 1

Authorized Place of Use:

NURSERY USE					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 W	WM	1	NE SW	15.8
5 S	1 W	WM	1	NW SW	12.2
TOTAL					28.0

6. Transfer Application T-14258 proposes an additional point of appropriation approximately 60.0 feet from the existing point of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 W	WM	1	NE SW	WELL 3 - 1990 FEET NORTH AND 1745 FEET EAST FROM THE SW CORNER OF SECTION 1

Transfer Review Criteria [OAR 690-380-0100(14), OAR 690-380-2110(2) and OAR 690-380-4010(2)]

7. Water has been used within the last five years prior to the submittal of Transfer Application T-14258 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-14258.
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 develops groundwater from the same aquifer as the authorized point of appropriation, as required by OAR 690-380-2110(2).
11. The proposed change, as conditioned, would not result in enlargement of the right.
12. The proposed change, as conditioned, would not result in injury to other existing water rights.
13. All other application requirements are met.

Conclusions of Law

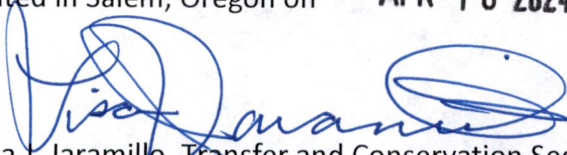
The additional point of appropriation proposed in Transfer Application T-14258 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The additional point of appropriation proposed in Transfer Application T-14258 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 95194 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 95194 is cancelled. A new certificate will be issued describing the portion of the right not affected by this transfer.
5. The quantity of water diverted at the new additional point of appropriation (Well 3), together with that diverted at the original point of appropriation (Well 2), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 2).

6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
7. 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.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2025**. 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.
9. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on **APR 18 2024**


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

Mailing Date: APR 19 2024