

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

In the Matter of Transfer Application T-12710, Wasco County	) ) ) ) ) )	FINAL ORDER APPROVING A CHANGE IN POINT OF APPROPRIATION, A CHANGE IN PLACE OF USE, PARTIAL DIMINUTION OF A WATER RIGHT, AND PARTIAL CANCELLATION OF A WATER RIGHT
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**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.

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**

PHILIP PETERSEN  
1102 E DEERFIELD  
COLBERT, WA 99005

**Agent**

SHONEE D. LANGFORD  
SCHWABE, WILLIAMSON & WYATT  
530 CENTER ST. NE, SUITE 400  
SALEM, OR 97301

**Findings of Fact**

1. On July 3, 2017, Philip Petersen filed an application to change the point of appropriation and place of use under Certificate 86059. The Department assigned the application number T-12710.
2. Notice of the application for transfer was published on July 11, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 29, 2018, the agent for the applicant submitted a revised application map and associated application pages which clarified the existing points of appropriation.

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. The Department determined that there are multiple primary water rights existing on the same parcel of land proposed in the transfer. Water right Certificates 55632 and 86059 were both issued for primary irrigation. Pursuant to OAR 690-380-5120 and 690-380-2240(2), the Department notified the applicant of the stacked primaries. On November 7, 2018, the agent for the applicant requested the Department consider Certificate 55632 to be primary and Certificate 86059 to be supplemental on approximately 4.25 acres. The Department shall diminish Certificate 86059 from primary irrigation to supplemental irrigation and is further described below in Finding of Fact No. 16.
5. On December 5, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12710 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 4, 2019, for the applicant to respond. On February 1, 2019, the agent for 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. The agent also requested additional time for completion of the transfer to be extended to October 1, 2022 to guarantee adequate time to complete the project.
6. On April 4, 2019, the Department issued a Preliminary Determination proposing to approve Transfer T-12710 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 April 9, 2019, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
7. The right to be transferred is as follows:

**Certificate:** 86059 in the name of W.J. PETERSEN (perfected under Permit G-11061)  
**Use:** IRRIGATION OF 92.4 ACRES  
**Priority Date:** MARCH 24, 1989  
**Rate:** 1.16 CUBIC FEET 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, 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:** THREE WELLS, within the FIFTEENMILE CREEK BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	POA Change	Measured Distances
1S	13E	WM	25	NE SE	RETAIN	WELL 2 (WASC 3429) - 330 FEET SOUTH AND 500 FEET WEST FROM THE E¼ CORNER OF SECTION 25
1S	13E	WM	25	NE SE	DROP	WELL 4 (WASC 3421) - 230 FEET SOUTH AND 470 FEET WEST FROM THE E¼ CORNER OF SECTION 25
1S	14E	WM	30	SW NW	RETAIN	WELL 1 (WASC 3425) - 1030 FEET NORTH AND 280 FEET EAST FROM THE W¼ CORNER OF SECTION 30

**Authorized Place of Use:**

IRRIGATION						Acreage per Change		Acre Total for both changes
Twp	Rng	Mer	Sec	Q-Q	Proposed Change	Change in POA	Change in POU	
1S	14E	WM	19	NE SW	POA	36.0	-	36.0
1S	14E	WM	19	NW SW	POA and POU	28.8	8.1	28.8
1S	14E	WM	19	SW SW	POA and POU	20.5*	0.2	20.5*
1S	14E	WM	19	SE SW	POA	7.1	-	7.1
Total						92.4	8.3	92.4

\*Note: 4.25 acres (of 20.5 ac) within the SW¼ SW¼ will be diminished from primary irrigation to supplemental irrigation and further described in Finding #17 below.

8. Transfer Application T-12710 proposes to change the place of use of the above described 8.3 acres of irrigation to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1S	14E	WM	19	NE SW	3.5
1S	14E	WM	19	NW SW	4.8
Total					8.3

9. Transfer Application T-12710 also proposes to discontinue use of Well 4, and change the point of appropriation approximately 25 feet north to Well 5 located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1S	13E	WM	25	NE SE	WELL 5 (WASC 51188)- 205 FEET SOUTH AND 462 FEET WEST FROM THE W¼ CORNER OF SECTION 30, T1S, R14E, WM

10. The Department finds, based on the information provided, that the proposed point of appropriation, Well 5 (WASC 51188) develops the same aquifer (source) as that of the original authorized Well 4 (WASC 3421), Well 2 (WASC 3429) and Well 1 (WASC 3425) and complies with the Department’s administrative rule under OAR 690-380-2110 (2) and OAR 690-380-4010(2)(e).

***Transfer Review Criteria (OAR 690-380-4010)***

11. Water has been used within the last five years prior to the submittal of Transfer Application T-12710 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.
12. Wells, pumps, 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-12710.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.
15. All other application requirements are met.

***Partial Cancellation of a Water Right***

16. The applicant submitted an affidavit meeting the requirements of ORS 540.621 for partial cancellation of a water right. The partial cancellation is for the use of 0.04 cfs from three wells within the Fifteenmile Creek Basin for irrigation of 3.0 acres under a portion of Certificate 86059. The applicant has abandoned any and all interest in this water right for primary irrigation and is described as follows:

- Certificate:** 86059 in the name of W.J. PETERSEN (perfected under Permit G-11061)
- Use:** IRRIGATION OF 3.0 ACRES
- Priority Date:** MARCH 24, 1989
- Rate:** 0.04 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, 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:** THREE WELLS, within the FIFTEENMILE CREEK BASIN

**Authorized Place of Use to be Cancelled:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	14 E	WM	19	NW SW	3.0

***Partial Diminution of a Certain Water Right***

17. As described above in Finding of Fact No. 4, pursuant to OAR 690-380-5120, it was determined that there were two, layered primary water rights on the same lands. On November 7, 2018, the agent for the applicant stated they want to keep water right Certificate 55632, having the more senior priority date as their primary water right and requested the Department diminish a portion of Certificate 86059 for 4.25 acres of primary irrigation to supplemental irrigation.

The portion of the right proposed to be diminished from primary irrigation to supplemental irrigation is described as follows:

- Certificate:** 86059 in the name of W.J. PETERSEN (perfected under Permit G-11061)
- Use:** IRRIGATION OF 4.25 ACRES
- Priority Date:** March 24, 1989
- Rate:** 0.05 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, 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:** THREE WELLS, within the FIFTEENMILE CREEK BASIN

**Authorized Place of Use to be Diminished to Supplemental Irrigation:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	14 E	WM	19	SW SW	4.25

**Conclusions of Law**

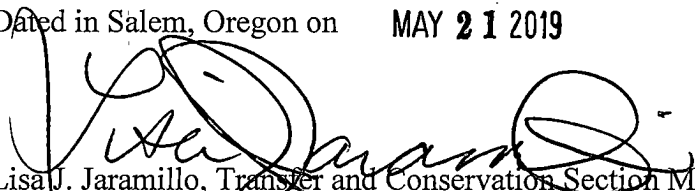
The change in point of appropriation and change in place of use proposed in Transfer Application T-12710 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000, the voluntary diminished portion of the right will be diminished and the abandoned portion of the right will be cancelled.

**Now, therefore, it is ORDERED:**

1. The change in point of appropriation and change in place of use proposed in Transfer Application T-12710 are approved. The voluntarily diminished portion of the right is diminished and the portion of the right that has been 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 86059 and any related decree.
3. Water right Certificate 86059 is cancelled.
4. The diminution of 4.25 acres under Certificate 86059 from primary irrigation to supplemental irrigation is approved.
5. 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 86059 and any related decree.
6. The quantity of water diverted at the new point of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.
7. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.
8. The former place of use of the transferred right as conditioned herein shall no longer receive water under the right.
9. 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 changes and full beneficial use of the water.

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

Dated in Salem, Oregon on **MAY 21 2019**



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

*Mailing date:* **MAY 22 2019**