

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

In the Matter of Transfer Application)	FINAL ORDER DENYING A
T-13238, Deschutes County)	TEMPORARY CHANGE IN PLACE OF
)	USE, POINT OF APPROPRIATION,
)	AND CHARACTER OF USE

Authority

Oregon Revised Statute (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to temporarily transfer the place of use and, if necessary to convey the water to the temporary place of use, the point of appropriation authorized under an existing water right. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

SHANE LUNDGREN
DUTCH PACIFIC PROPERTIES, LP
PO BOX 3500, PMB 303
SISTERS, OR 97759

Findings of Fact

1. On August 5, 2019, SHANE LUNDGREN of DUTCH PACIFIC PROPERTIES, LP. filed an application to temporarily change the place of use, character of use, and point of appropriation to serve the proposed place of use under Certificate 89259 for a period of 25 years, pursuant to OAR 690-380-8000(2). The Department assigned the application number T-13238.
2. Notice of the application for transfer was published on August 13, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 6, 2019, Transfer Application T-13238 was assigned from DUTCH PACIFIC PROPERTIES, LP, SHANE LUNDGREN to PINNACLE UTILITIES, LLC.
4. On October 9, 2019, Transfer Application T-13238 was assigned from PINNACLE UTILITIES, LLC to DUTCH PACIFIC PROPERTIES, LP, SHANE LUNDGREN.

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, 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. The portion of the right to be transferred is as follows:

Certificate: 89259 in the name of DUTCH PACIFIC PROPERTIES, INC. (perfected under Permit G-13492)
Use: IRRIGATION of 16.5 ACRES
Priority Date: MARCH 18, 1998
Rate: 0.21 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 per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL in the WHYCHUS CREEK (FORMERLY KNOWN AS SQUAW) CREEK, BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	4	SE NW	WELL - 326 FEET NORTH AND 180 FEET WEST FROM THE C1/4 CORNER OF SECTION 4

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	4	SE NW	16.5

6. Temporary Transfer Application T-13238 proposes to temporarily change the character of use of the right to Quasi-municipal uses.
7. Temporary Transfer Application T-13238 also proposes to temporarily change the place of use of the right to:

QUASI-MUNICIPAL USES				
Twp	Rng	Mer	Sec	Q-Q
15 S	12 E	WM	17	NW NE
15 S	12 E	WM	17	SW NE
15 S	12 E	WM	17	NE NW
15 S	12 E	WM	17	SE NW
15 S	12 E	WM	17	SW SW
15 S	12 E	WM	17	SE SW
15 S	12 E	WM	17	NW SE
15 S	12 E	WM	17	SW SE
15 S	12 E	WM	20	NW NE
15 S	12 E	WM	20	SW NE
15 S	12 E	WM	20	NE NW
15 S	12 E	WM	20	NW NW
15 S	12 E	WM	20	SW NW
15 S	12 E	WM	20	SE NW
15 S	12 E	WM	20	NE SW
15 S	12 E	WM	20	NW SW
15 S	12 E	WM	20	SW SW

QUASI-MUNICIPAL USES				
Twp	Rng	Mer	Sec	Q-Q
15 S	12 E	WM	20	NW SW
15 S	12 E	WM	20	SW SW
15 S	12 E	WM	20	NE SE
15 S	12 E	WM	20	SW SE
15 S	12 E	WM	20	SE SE
15 S	12 E	WM	21	SW SW
15 S	12 E	WM	28	NE NE
15 S	12 E	WM	28	NW NE
15 S	12 E	WM	28	SW NE
15 S	12 E	WM	28	SE NE
15 S	12 E	WM	28	NE NW
15 S	12 E	WM	28	NW NW
15 S	12 E	WM	28	SW NW
15 S	12 E	WM	28	SE NW
15 S	12 E	WM	28	NE SW
15 S	12 E	WM	28	NW SW
15 S	12 E	WM	28	NE SE
15 S	12 E	WM	28	NW SE
15 S	12 E	WM	29	NE NE
15 S	12 E	WM	29	NW NE
15 S	12 E	WM	29	SW NE
15 S	12 E	WM	29	SE NE
15 S	12 E	WM	29	SW NW
15 S	12 E	WM	29	SE NW
15 S	12 E	WM	29	NE SW
15 S	12 E	WM	29	NW SW
15 S	12 E	WM	29	NE SE
15 S	12 E	WM	29	NW SE
15 S	12 E	WM	29	SE SE
15 S	12 E	WM	30	NW NE
15 S	12 E	WM	30	SW NE
15 S	12 E	WM	30	SE NE
15 S	12 E	WM	30	NE NW
15 S	12 E	WM	30	SE NW
15 S	12 E	WM	30	NE SE

8. A change in point of appropriation is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13238 proposes to move the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from the authorized point of appropriation in miles (mi.)
15 S	12 E	WM	29	NE NE	KEM WELL - 880 FEET SOUTH AND 800 FEET WEST FROM THE NE CORNER OF SECTION 29	12.0 mi.
15 S	12 E	WM	29	SE NE	WELL #4 - 1677 FEET NORTH AND 1466 FEET	12.1 mi.

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from the authorized point of appropriation in miles (mi.)
					WEST FROM THE SE CORNER OF SECTION 29	
15 S	12 E	WM	29	NW SE	DAVIS WELL - 2130 FEET NORTH AND 1590 FEET WEST FROM THE SE CORNER OF SECTION 29	12.0 mi.
15 S	12 E	WM	29	SE SE	BENNETT WELL - 250 FEET NORTH AND 650 FEET WEST FROM THE SE CORNER OF SECTION 29	12.3 mi.

9. Certificate 89259 does not specify the irrigation season, nor is an irrigation season specified by Basin Program or Decree. Consistent with OAR 690-250-0070(1), the irrigation season is March 1 through October 31.
10. The total volume of water that may be diverted for Quasi-municipal uses, as conditioned, is 49.5 Acre-Feet (AF) March 1 through October 31. (3.0 x 16.5 = 49.5).

Temporary Transfer Review Criteria

11. Aerial photographs were submitted, but the Department has determined that this evidence was insufficient to show use under the right.
12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
13. The proposed changes, as conditioned, would not result in enlargement of the right.
14. On March 15, 2019, the Department determined the proposed transfer will result in another, existing water right not receiving previously available water to which it is legally entitled or result in significant interference with a surface water source.

The Department determined the proposed points of appropriation (POA) will not develop the same aquifer (source) as the existing authorized POAs. The “from” well (DESC 52653) is located in the Whychus Creek Zone of Impact. DESC 52653 is producing water from glacial outwash gravels and located in the town of Sisters. The water-level in DESC 52653 is similar to that in long term observation well DESC 3016 which displays long term climatic cycles.

The proposed wells (DESC 756, DESC 3666, DESC 3669 [L-31049], and proposed Well 4) are located in the Deschutes River General Zone of Impact. The proposed wells are all producing water from water-bearing zones in the Deschutes Formation. The water-levels in DESC 3666 and DESC 3669 are similar to those in long term observation wells located in or near Bend and Redmond (DESC 3581, DESC 3949, AND DESC 5045) which all display long term water level declines.

The Department also determined the proposed changes, at its maximum allowed rate of use, would likely result in an increase in interference with another surface water source. Production out of the "from" well (DESC 52653) interferes with Whychus Creek along the reach through the town of Sisters. Production out of the "to" wells will interfere with the Deschutes River at the Lower Bridge area approximately 8 miles north of the wells.

The flow of the Deschutes River at Lower Bridge was measured between 1994 and 1997 at discontinued gage 14074630. This record shows seasonal low flows on the order of approximately 40 cfs. The record end before the mitigation program went into effect. Therefore, the seasonal low flow of the river is currently unknown, but it is likely higher due to the mitigation program. This temporary transfer does not spell out well specific rates on the existing wells, although it does for the proposed well (0.21 cfs). If all 4 wells produced the same amount this would be 0.84 cfs, or approximately 2% of the seasonal low flow during the summers of 1995 and 1996. Acknowledging that the seasonal low flow is likely higher currently than it was prior to the mitigation program, and the nature of the Deschutes Formation would act to attenuate the pumping effects, it still seems that this transfer would have the potential to cause significant interference with the Deschutes River near the Lower Bridge area.

15. The proposed changes would result in injury to other water rights.
16. The application is requesting a change in character of use from irrigation to quasi-municipal uses under OAR 690-380-8000(2). Pursuant to OAR 690-380-8004(4); notwithstanding the requirements of OAR 690-380-4020, the Department shall issue an order to approve a request for a temporary transfer under this rule if the proposed use is municipal use. OAR 690-380-8000(2) does not allow for a change in character of use from irrigation to quasi-municipal uses.
17. The applicant provided copies of statutory warranty deeds which identify other landowners who are not party to the application. The deeds that were provided identify BIRD GARD LLC as the owner of Lot 10, which is not part of the temporary transfer, KappyKo, LLC as the owner of Lot 11 with a portion of Tract A, Sun Ranch Phase I, Grand Peaks at Sisters LLC as owner of a portion of Tract A, and Swordfish Consulting, LLC, as the owner of Parcel 2, Land Partition Plat No. 2015-10. The landowner information for the remaining portions of the land to which the water right is appurtenant have not been provided, nor have any Affidavits of Consent by Deeded Landowner been submitted. The applicant has not provided the required information to show they are owner of the land to which Certificate 89259 is appurtenant.

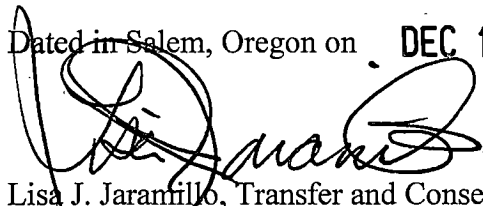
Conclusions of Law

The temporary change in place of use, character of use, and point of appropriation to serve the temporary place of use proposed in Temporary Transfer Application T-13238 is **NOT** consistent with the requirements of ORS 540.523 and OAR 690-380-8000. Pursuant to OAR 690-380-2110(2); a change in point of appropriation under a water right or certificate of registration modification is restricted to the same aquifer. The proposed points of appropriation will not develop the same source as the authorized point of appropriation. OAR 690-380-8000(2) does not allow for a change in character of use from irrigation to quasi-municipal uses, and the evidence of use was determined to be insufficient in showing use under the right.

Now, therefore, it is ORDERED:

1. The temporary change in place of use, character of use, and change in point of appropriation to serve the temporary place of use proposed in Temporary Transfer Application T-13238 are denied.

Dated in Salem, Oregon on **DEC 13 2019**



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

Mailing Date: **DEC 17 2019**