

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

In the Matter of Transfer Application )  
T-11645, Jefferson County )  
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)  
)  
)

FINAL ORDER APPROVING A  
CHANGE IN POINT OF DIVERSION,  
PLACE OF USE, AND CHARACTER  
OF USE

**Authority**

Oregon Revised Statute (ORS) 540.505 to 540.580 establishes 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 Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

HANK BARTON  
3838 SW 52ND PLACE  
PORTLAND, OR 97721

**Findings of Fact**

1. On August 5, 2013, HANK BARTON filed an application to change the point of diversion, the place of use and the character of use under Certificate 68374. The Department assigned the application number T-11645.
2. Notice of the application for transfer was published on August 13, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 21, 2014, the Department contacted the applicant by email to notify the applicant of a deficiency in the application. The Department requested that the deficiency be resolved by April 22, 2014. On March 26, 2014, the applicant provided a written response to the Department, resolving the deficiency.
4. On November 24, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11645 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 29, 2014, 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.

5. On January 22, 2015, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11645 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on January 27, 2015, and in the Sisters' The Nugget newspaper on January 28 and February 4, 2015, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

6. The portion of the right to be transferred is as follows:

**Certificate:** 68374 in the name of JOE HANSEN (confirmed by Deschutes River Decree)  
**Use:** IRRIGATION OF 4.0 ACRES, DOMESTIC AND STOCK  
**Priority Date:** 1888  
**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-SIXTIETH of one cubic foot per second (or its equivalent) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.  
**Period of Use:** for irrigation, May 1 to September 15  
**Source:** LAKE CREEK, a tributary of the METOLIUS RIVER

**Authorized Place of Use:**

IRRIGATION, DOMESTIC AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	9 E	WM	16	NW SE	4.0

7. Certificate 68374 does not describe the location of the point of diversion, however information is available from the applicant indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	9 E	WM	16	SW SW	POD 1: 75 FEET NORTH AND 265 FEET EAST OF THE SW CORNER OF SECTION 16

8. Transfer Application T-11645 proposes to move the authorized point of diversion approximately 0.5 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	9 E	WM	16	SW SE	POD 2: 1145 FEET NORTH FROM THE SOUTH ¼ CORNER OF SECTION 16

9. Transfer Application T-11645 proposes to change the place of use of the right within:

Twp	Rng	Mer	Sec	Q-Q
13 S	9 E	WM	16	NW SE

10. Transfer Application T-11645 proposes to change the character of use under Certificate 68374 from irrigation of 4.0 acres, domestic and stock uses to pond maintenance for multipurpose use including, but not limited to, irrigation, domestic and stock uses from May 1 to September 15.
11. Transfer Application T-11645 also proposes to change the character of use under Certificate 68374 from domestic and stock uses to pond maintenance for multipurpose use including, but not limited to, domestic and stock uses from September 16 to April 30.
12. The use of water under Certificate 68374 is limited to 12.0 acre-feet per year (4.0 acres x 3.0 acre-feet per year (afy) – 12.0 afy) during the irrigation season of May 1 to September 15.
13. Use of more water per year than could maximally have been beneficially used for the original domestic use and stock use would constitute enlargement of the right, which is not allowable. Therefore, to avoid enlarging the right in the conversion to pond maintenance, a volume limit should be added to the right, based on the best available estimate of the maximum amount of water that could have been beneficially diverted and used for domestic and stock purposes during the time period of September 16 to April 30.
14. According to the U.S. Census Bureau (2008-2012 American Community Survey 5-Year Estimates), the average household size in Oregon is 2.61 persons. According to the U.S. Geological Survey each person in a household uses 80-100 gallons of water per day. (The use of water under the domestic portion of this right for pond maintenance is limited to 0.26 acre-foot per year (one residence x 2.61 persons per residence x 90 gallons per day (gpd) ÷ 24 hr/day ÷ 60 min/hr = 0.16 gallons per minute (gpm) ÷ 226.67 acre-feet/day x 365 days = 0.26 afy). The use of water under the domestic portion of this right for pond maintenance is limited to 0.16 acre-feet for the time of September 16 to April 30 (0.16 gpm ÷ 226.67 acre-foot day x 227 days = 0.16 acre-feet).
15. According to the Oregon State Extension Service the average number of cattle per acre is one. The use of water under the stock portion of this right for pond maintenance for the time of September 16 to April 30 is 1.82 acre-feet (0.004 cfs x 1.98 = 0.008 acre-foot/day x 227 days = 1.82 acre-feet)
16. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

17. 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.
18. A diversion structure and ditch 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-11645.

19. The proposed changes would not result in enlargement of the right provided the annual volume of water diverted for pond maintenance does not exceed 12.0 acre-feet and shall not exceed a rate of diversion of ONE-SIXTIETH of one cubic foot per second during the irrigation season of May 1 to September 15 and does not exceed 1.98 acre-feet during the remainder of the year (September 16 to April 30).
20. The proposed changes would not result in injury to other water rights.

### **Conclusions of Law**

The change in point of diversion, change in place of use, and change in character of use proposed in Transfer Application T-11645 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

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

1. The change in point of diversion, change in place of use and change in character of use proposed in Transfer Application T-11645 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 68374 and any related decree.
3. Water right Certificate 68374 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 point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
5. The use of water for pond maintenance shall not exceed a total quantity diverted of 12.0 acre-feet per year and shall not exceed a rate of diversion of ONE-SIXTIETH of one cubic foot per second during the irrigation season (May 1 to September 15), or its equivalent in case of rotation, measured at the point of diversion from the source.
6. The use of water for pond maintenance shall not exceed a total quantity diverted of 1.98 acre-feet per year from September 16 to April 30, measured at the point of diversion from the source.
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 new point of diversion.
  - b. The water user shall maintain the meter or measuring device in good working order.
  - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.

8. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from ODFW that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

9. The former place of use of the transferred right shall no longer receive water under the right.
10. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. 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.
11. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 9 day of March, 2015.

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

Mailing Date: MAR 12 2015