

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

| | | |
|---------------------------------------|---|-----------------------|
| In the Matter of Transfer Application |) | FINAL ORDER APPROVING |
| T-13066, Benton County |) | ADDITIONAL POINTS OF |
| |) | DIVERSION |

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

BYLUND KIGER FARMS, LLC
1986 SE POWELLS RD
CORVALLIS, OR 97333

Findings of Fact

1. On November 29, 2018, BYLUND KIGER FARMS, LLC filed an application for additional points of diversion under Certificate 54989. The Department assigned the application number T-13066.
2. Notice of the application for transfer was published on December 4, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 22, 2019, the applicant submitted a revised map, identifying 41.9 acres for transfer, with 5.1 acres remaining.
4. On February 7, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13066 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 8, 2019, 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 February 28, 2019, the Department issued a Preliminary Determination proposing to approve Transfer T-13066 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 March 5, 2019, and in the Eugene Weekly newspaper on March 7 and March 14, 2019 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: 54989 in the name of MELVIN WILLIAMSON, ET AL (perfected under Permit S-25683)
Use: IRRIGATION of 41.9 ACRES
Priority Date: JULY 29, 1958
Rate: 0.43 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, shall be limited to 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 2.5 acre-feet for each acre irrigated during the irrigation season of each year.
Source: WILLAMETTE RIVER, a tributary of COLUMBIA RIVER

Authorized Points of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Glott | Measured Distances |
|------|-----|-----|-----|-------|-------|--------------------|
| 12 S | 4 W | WM | 19 | NW SE | 6 | POD A - NONE GIVEN |
| 12 S | 4 W | WM | 19 | SE SE | 6 | POD B - NONE GIVEN |
| 12 S | 4 W | WM | 30 | NE NE | 10 | POD C - NONE GIVEN |
| 12 S | 4 W | WM | 30 | SE NE | 9 | POD D - NONE GIVEN |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|--------------|-----|-----|-----|-------|------|-------------|
| Twp | Rng | Mer | Sec | Q-Q | GLot | Acres |
| 12 S | 4 W | WM | 30 | NE NE | 10 | 8.6 |
| 12 S | 4 W | WM | 30 | NW NE | | 0.8 |
| 12 S | 4 W | WM | 30 | SW NE | | 8.4 |
| 12 S | 4 W | WM | 30 | SE NE | 9 | 14.4 |
| 12 S | 4 W | WM | 30 | NE SE | 8 | 5.3 |
| 12 S | 4 W | WM | 30 | NW SE | | 4.4 |
| TOTAL | | | | | | 41.9 |

7. Transfer Application T-13066 proposes additional points of diversion with approximate distances from the existing points of diversion identified as follows:

| IRRIGATION | | | | | | | | |
|------------|------|-----|-----|-----|-------|-----------------|--|--|
| APOD # | Twp | Rng | Mer | Sec | Q-Q | GLot or Tax Lot | Measured Distances | Approximate Distance from Authorized POD's |
| APOD 2 | 12 S | 4 W | WM | 30 | NE NE | 10 | 50 FEET SOUTH AND 300 FEET WEST FROM THE NE CORNER OF SECTION-30 | POD A – 0.5 mile POD B – 0.1 mile POD C – 0.1 mile POD D – 0.5 mile |
| APOD 1 | 12 S | 4 W | WM | 30 | SE NE | 201 | 2637 FEET SOUTH AND 740 FEET WEST FROM THE NE CORNER OF SECTION 30 | POD A – 1.0 mile POD B – 0.8 mile POD C – 0.5 mile POD D – 0.1 mile |

8. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

9. 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.
10. A pump, 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-13066.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

Conclusions of Law

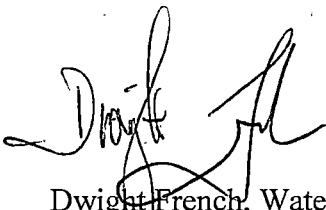
The changes in points of diversion proposed in Transfer Application T-13066 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of diversion proposed in Transfer Application T-13066 is approved.

2. Water right Certificate 54989 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
3. 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 54989 and any related decree.
4. The quantity of water diverted at the additional points of diversion (APOD 1 and APOD 2), together with that diverted at the original points of diversion (POD A, POD B, POD C and POD D), shall not exceed the quantity of water lawfully available at the original points of diversion (POD A, POD B, POD C and POD D).
5. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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.

Signed at Salem, Oregon this JUN 03 2019



Dwight French, Water Right Services Division Administrator for
THOMAS M. BYLER, DIRECTOR
Oregon Department of Water Resources

Mailing date: JUN 06 2019