

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

In the Matter of Transfer Application)	FINAL ORDER
T-12436, Clackamas County)	APPROVING A CHANGE IN
)	POINT OF APPROPRIATION AND
)	A CHANGE IN PLACE OF USE

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

SESTER FARMS INC.
C/O TED SESTER
33205 SE OXBOW DR
GRESHAM, OR 97080

Findings of Fact

1. On July 21, 2016, SESTER FARMS INC., filed an application for an additional point of appropriation, a change in point of appropriation, and to change the place of use under Certificate 30659. The Department assigned the application number T-12436.
2. Notice of the application for transfer was published on July 26, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 9, 2017, the Department contacted the agent to let them know of deficiencies in the application. The agent agreed on May 10, 2017, that the application should be clarified that the additional point of appropriation should be just a change in point of appropriation from the original well to Wells 2 and 3.
4. On May 12, 2017, the Department contacted the applicant to let them know of deficiencies in the place of use. On May 22, 2017, the agent provided a statement from the applicant on use of water and submitted additional maps.

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 July 25, 2017, the Department contacted the applicant to let them know of additional deficiencies found with regard to three acres of the place of use. On July 28, 2017, the agent provided additional information and evidence of use of the water on the authorized place of use.
6. On August 1, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12436 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 1, 2017, 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.
7. On September 28, 2017, the Department issued a Preliminary Determination proposing to approve Transfer T-12436 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 October 3, 2017, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

8. The right to be transferred is as follows:

Certificate: 30659 in the name of KATSUMI SUNAMOTO (perfected under Permit G-1645)

Use: IRRIGATION OF 47.0 ACRES

Priority Date: JULY 20, 1960

Rate: 0.37 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 exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL, a tributary of DEEP CREEK

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	3 E	WM	10	NE NE	360 FEET SOUTH AND 610 FEET WEST FROM THE NE CORNER OF SECTION 10

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	3 E	WM	10	NE NE	7.0
2 S	3 E	WM	10	SE NE	40.0
Total					47.0

9. Transfer Application T-12436 proposes to move the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances	Approximate Distance from Authorized Well
2 S	3 E	WM	10	NE NE	300	WELL 2 - CLAC 55502 - 470 FEET SOUTH AND 330 FEET WEST FROM THE NE CORNER OF SECTION 10	300 ft
2 S	3 E	WM	10	NE NE	300	WELL 3 - 450 FEET SOUTH AND 45 FEET WEST FROM THE NE CORNER OF SECTION 10	570 ft

10. Transfer Application T-12436 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	3 E	WM	10	NE NE	10.0
2 S	3 E	WM	10	SE NE	37.0
Total					47.0

Transfer Review Criteria (OAR 690-380-4010)

11. 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.
12. 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-12436.
13. The proposed changes would not result in enlargement of the right.
14. The proposed changes would not result in injury to other water rights.
15. All other application requirements are met.

Conclusions of Law

The change in point of appropriation and change in place of use proposed in Transfer Application T-12436 is 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 change in point of appropriation and change in place of use proposed in Transfer Application T-12436 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 30659 and any related decree.

3. Water right Certificate 30659 is cancelled.
4. The quantity of water diverted at the new points of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.
5. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a totalizing flowmeter, or, with prior approval of the Director, another suitable measuring device at each point of appropriation (new and existing) appropriation.
 - 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.
6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
7. The former place of use of the transferred right shall no longer receive water under the right.
8. 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.
9. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 4 day of December, 2017.



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

Mailing date: DEC 08 2017