

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

In the Matter of Transfer Application            )     FINAL ORDER APPROVING A  
T-12736, Yamhill County                        )     CHANGE IN POINT OF DIVERSION  
  )     AND A CHANGE IN PLACE OF USE

**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**

MICHAEL L. PETERSON  
PO BOX 442  
NEWBERG, OR 97132

**Findings of Fact**

1. On September 1, 2017, MICHAEL L. PETERSON filed an application to change the point of diversion and to change the place of use under Certificate 47353. The Department assigned the application number T-12736.
2. Notice of the application for transfer was published on September 12, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 2, 2017, the Department sent the applicant and agent a deficiency letter addressing a discrepancy found in the application during the initial review of the file.
4. On November 2, 2017, the Department received an amended Table 1 of the application, resolving the deficiencies addressed in the letter sent by the Department.
5. On March 2, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12736 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 2, 2018, for the applicant to respond.
6. On March 2, 2018, in response to the draft Preliminary Determination, the Applicant's agent informed the Department of two Scriveners' error in Finding of Facts #8 and #11.

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.

7. On March 2, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12736 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 2, 2018, 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.
8. On April 5, 2018, the Department issued a Preliminary Determination proposing to approve Transfer T-12736 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 10, 2018, and in the Newberg Graphic newspaper on April 11, 2018 and April 18, 2018 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
9. On April 10, 2018, the Applicant's agent submitted in writing a request to extend the completion date to October 1, 2021.
10. The right to be transferred is as follows:

**Certificate:** 47353 in the name of DELMAR LLOYD PETERSON  
(perfected under Permit S-36161)

**Use:** DOMESTIC USE FOR ONE FAMILY AND IRRIGATION OF  
2.7 ACRES

**Priority Date:** SEPTEMBER 5, 1972

**Rate:** 0.035 CUBIC FOOT PER SECOND, BEING 0.005 CFS FOR DOMESTIC  
USE AND 0.03 CFS FOR IRRIGATION

**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  
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:** AYERS CREEK, a tributary of TUALATIN RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 S	3 W	WM	21	SE SW	50	1200 FEET NORTH AND 1220 FEET WEST FROM THE S1/4 CORNER OF SECTION 21

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	3 W	WM	21	SE SW	50	0.7
2 S	3 W	WM	21	SE SW	51	2.0
TOTAL						2.7

DOMESTIC USE					
Twp	Rng	Mer	Sec	Q-Q	DLC
2 S	3 W	WM	21	SE SW	51

11. Transfer Application T-12736 proposes to move the authorized point of diversion approximately 1460 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 S	3 W	WM	20	SE SE	51	1090 FEET NORTH AND 80 FEET WEST FROM THE SW CORNER OF SECTION 21

12. Transfer Application T-12736 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	3 W	WM	20	SE SE	51	0.4
2 S	3 W	WM	21	SW SW	51	2.3
TOTAL						2.7

DOMESTIC USE					
Twp	Rng	Mer	Sec	Q-Q	DLC
2 S	3 W	WM	21	SW SW	51

13. The Oregon Department of Fish and Wildlife has determined that the diversion is not currently equipped with an appropriate fish screen, but a fish screen may be required in the future at the new point of diversion to prevent fish from entering the diversion.

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

14. 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.
15. 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-12736.
16. The proposed changes would not result in enlargement of the right.
17. The proposed changes would not result in injury to other water rights.
18. All other application requirements have been met.

**Conclusions of Law**

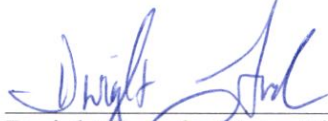
The changes in point of diversion and place of use proposed in Transfer Application T-12736 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

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

1. The change in point of diversion and change in place of use proposed in Transfer Application T-12736 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 47353 and any related decree.
3. Water right Certificate 47353 is cancelled.
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. 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 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. The Oregon Department of Fish and Wildlife (ODFW) may require the water user to install an approved fish screen at the new point of diversion within one year after receiving written notification that a fish screen is required. Once installed the water user shall maintain and operate the fish screen at the new point of diversion according to 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.
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, 2021**. 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 change 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, MAY 25 2018.



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

Mailing date: MAY 29 2018