# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A CHANGE
T-12504, Klamath County	)	IN POINT OF APPROPRIATION TO
	)	REFLECT HISTORIC USE

#### **Authority**

ORS 540.532 establishes the process in which a water right holder may submit a request for a change in point of diversion to reflect historical use under an existing water right. OAR Chapter 690-380-2120 implements the statute and provides the Department's procedures and criteria for evaluating historic point of diversion/appropriation transfer applications.

#### **Applicant**

JOHN T. STILWELL 11767 KESTREL RD. KLAMATH FALLS, OR 97601

#### **Findings of Fact**

- 1. On October 14, 2016, John T. Stilwell filed a transfer application for authorization of a historic point of appropriation under Certificate 38346. The Department assigned the application number T-12504.
- 2. Notice of the application for transfer was published on October 25, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. On February 8, 2017, the Department informed the applicant, by e-mail, that the transfer application map was deficient. The Department worked with the applicant to develop a satisfactory map.
- 4. On February 13, 2017, the Department mailed a copy of a draft order proposing to approve Transfer Application T-12504 to the applicants.
- 5. The portion of the right to be transferred is as follows:

Certificate: 38346 in the name of Vernon M. Gearhard (perfected under Permit

G-3465)

Use: Irrigation of 62.5 Acres

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.

Priority Date: JUNE 19, 1967

Rate: 0.78 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 3 acre-feet per acre for each acre irrigated during the irrigation

season of each year.

**Source:** A Well, in the Lost River Basin

#### **Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	
40 S	10 E	WM	32	SE SE	2020 FEET SOUTH AND 1220 FEET WEST FROM THE E1/4 CORNER OF SECTION 32	

#### **Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	10 E	WM	32	NE SE	38.00
40 S	10 E	WM	32	NW SE	20.00
40 S	10 E	WM	32	SE SE	4.50

6. Transfer Application T-12504 proposes to move the authorized point of appropriation approximately 694 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	
40 S	10 E	WM	32	SE SE	1316 FEET NORTH AND 1307 FEET WEST FROM THE SE CORNER OF SECTION 32	

#### Transfer Review Criteria (ORS 540.532 and OAR 690-380-2120)

- 7. Pursuant to OAR 690-380-2120(2)(a), evidence has been submitted that the actual, current point of appropriation for the water right in question, as described in Finding No. 6, has been in use for more than 10 years.
- 8. Pursuant to OAR 690-380-2120(2)(c), the Watermaster provided a statement that to his knowledge there has been no complaint of injury due to the use of water at the actual, current point of appropriation, prior to the transfer request.
- 9. The Department did not identify any affected water rights pursuant to OAR 690-380-2120(3).
- 10. Water has been used within the last five years according to the terms and conditions of the right. There is no evidence available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- 11. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
- 12. The Department has determined that the proposed point of appropriation (KLAM 54099), will develop the same source of water as the authorized as the existing well (KLAM 14693).

The existing well produces water from predominantly basin-fill sediment unit and the underlying predominantly basalt-volcanic rock and sediment unit. The proposed new well shall only appropriate ground water from the same water aquifer consistent with OAR 690-380-2110(2).

- 13. The proposed change would not result in enlargement of the right.
- 14. The proposed change would not result in injury to other water rights.

#### Conclusions of Law

The proposed change in point of appropriation to reflect historical use in application T-12504 is consistent with the requirements of ORS 540.532 and OAR 690-380-2120.

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

- 1. The change proposed in T-12504 is approved and effective immediately.
- 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 38346 and any related decree.
- 3. Water right certificate 38346 is cancelled. Certificate 92345 will be issued to describe the change in point of appropriation for the portion of the right included in T-12504. Certificate 92346 shall be issued to describe the portion of Certificate 38346 not modified by this order. Together, the new Certificates shall supersede Certificate 38346.
- 4. The quantity of water diverted at the new point 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 flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion.
  - b. The water user shall maintain the meter or measuring devices in good working order.
  - c. The water user shall allow the Watermaster access to the meter or measuring devices; provided however, where the meter or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.

Dated at Salem, Oregon this 3 day of March 2017.

Dwight French, Water Right Services Administrator, for

Tom M. Byler, Director

Mailing date: MAR 0 8 2017

### **Oregon Water Resources Department**

## **Measurement Condition Information for the Applicant**

(to be sent with the Draft Preliminary Determination or Final Order)

Transfer #: T-12504

☐ In order to avoid enlargement of the right required to be installed prior to diversion of at each point of diversion/appropr☐ at each new point of diversion/appropr☐ at each new point of diversion/appropr☐ at each new point of diversion/approprior.	of water, as a condition riation (new and existing	of this transfer:	will be
For additional information, or to obtain approapplicant should contact the area Watermaste		of measurement device, th	ne
Watermaster name: Tyler Martin			
District: 17			
Address: 305 Main St			
City/State/Zip: Klamath Falls, OR 97601			
Phone: <u>541-883-4182</u>			
Email: Tyler.E.Martin@oregon.gov			
Note: If a device other than the one specified approved by the Watermaster, fill out an ***********************************	nd mail the form below ****************** Measurement Devi	to the Salem office. ************************************	
On behalf of the Director, I authorize use of	• •		levice:
Watermaster signature  If this form is used for approval of an alterna	District	Date ice, it must be mailed to:	
Oregon Water Resources Department 725 Summer Street NE, Suite A Salem, OR 97301-1266			