

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

In the Matter of Transfer Application) FINAL ORDER APPROVING AN
T-13512, Linn County) ADDITIONAL POINT 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

LEE GILMOUR
30427 STELLMACHER DRIVE
ALBANY, OR 97321

Findings of Fact

1. On September 2, 2020, LEE GILMOUR filed an application for an additional point of diversion under Certificate 90098. The Department assigned the application number T-13512.
2. Notice of the application for transfer was published on September 8, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 25, 2021, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of deficiencies in the application. Table 1 of the application identified a change in point of diversion, whereas Table 2 identified an additional point of diversion, and the affidavits for Evidence of Use and Consent by Deeded Landowner are copies. The Department requires an original signature on affidavits, so the original affidavits need to be submitted. The Department requested that the deficiencies be resolved by February 24, 2021.

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.

4. On February 24, 2021, the agent submitted a revised Table 1 identifying an additional point of diversion, rather than a change in point of diversion. The applicant is actively retrieving the original affidavits for Evidence of Use, to be submitted at a later date.
5. On March 22, 2021, the Department informed the applicant, that a Final Order would not be issued unless the Department receives the original Evidence of Use affidavits.
6. On June 14, 2021, the Department received an Evidence of Use affidavit containing an original signature.
7. On June 28, 2021, the Department received an Affidavit of Consent by Deeded Landowner containing an original signature, resolving the deficiencies.
8. On July 7, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13512 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 6, 2021, 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.
9. On September 22, 2021, the Department issued a Preliminary Determination proposing to approve Transfer T-13512 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 September 28, 2021, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
10. The portion of the right to be transferred is as follows:

Certificate: 90098 in the name of WILLIAM J. STELLMACHER and JOYCE M. CARNEGIE (perfected under Permit S-53335)

Use: IRRIGATION of 84.93 ACRES

Priority Date: MAY 6, 1991

Rate: 1.03 CUBIC FEET PER SECOND FROM LIVE FLOW AND NOT MORE THAN 104.8 ACRE-FEET (AF) PER YEAR FROM STORED WATER ONLY, PROVIDED THAT THE TOTAL VOLUME OF STORED WATER USED UNDER THIS PERMIT TOGETHER WITH ANY AMOUNT USED UNDER PERMIT 53334 DOES NOT EXCEED 104.8 AF PER YEAR, BEING THE AMOUNT OF STORED WATER MADE AVAILABLE UNDER THE BUREAU OF RECLAMATION WATER SUPPLY CONTRACT

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-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Period of Use: MARCH 1 THROUGH JUNE 30 AND SEPTEMBER 1 THROUGH OCTOBER 31 FROM LIVE FLOW; STORED WATER MAY BE USED MARCH 1 THROUGH OCTOBER 31 OR AS FURTHER LIMITED BY THE BUREAU OF RECLAMATION WATER SUPPLY CONTRACT.

Source: HORSESHOE LAKE AND WILLAMETTE BASIN PROJECT RESERVOIRS, CONSTRUCTED UNDER PERMIT R-5363, TRIBUTARIES OF WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
11 S	4 W	WM	15	SW SW	59	POD #1 - 500 FEET NORTH AND 100 FEET EAST FROM THE SW CORNER OF SECTION 15

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
11 S	4 W	WM	15	NE SW		15.70
11 S	4 W	WM	15	NW SW	59	3.50
11 S	4 W	WM	15	SW SW	59	8.93
11 S	4 W	WM	15	SE SW		39.50
11 S	4 W	WM	15	NW SE	58	4.40
11 S	4 W	WM	15	SW SE		12.90
Total						84.93

11. Transfer Application T-13512 proposes an additional point of diversion approximately 515.8 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
11 S	4 W	WM	15	SW SW	59	POD #2 - 214 FEET NORTH AND 530 FEET EAST FROM THE SW CORNER OF SECTION 15

12. 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)]

13. 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.
14. 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-13512.

15. The proposed change would not result in enlargement of the right.
16. The proposed change would not result in injury to other water rights.
17. All other application requirements are met.

Conclusions of Law

The additional point of diversion proposed in Transfer Application T-13512 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The additional point of diversion proposed in Transfer Application T-13512 is 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 90098 and any related decree.
3. Water right Certificate 90098 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 additional point of diversion (POD #2), together with that diverted at the original point of diversion (POD #1), shall not exceed the quantity of water lawfully available at the original point of diversion (POD #1).
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 (new and existing).
 - 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. 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.

7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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.
8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on

JAN 26 2022



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

Mailing date: JAN 27 2022