

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-12370, Jefferson County) CHANGE IN 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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntary request that it be cancelled.

Applicants

METOLIUS MEADOWS PROPERTY
OWNERS ASSOCIATION
PO BOX 120
CAMP SHERMAN, OR 97730

MICHAEL WOODS
PO BOX 8000
BLACK BUTTE RANCH, OR 97759

TOM AND PHYLLIS WILLIAMSON
PO BOX 728
CAMP SHERMAN, OR 97730

REBECCA FIELD
2001 NW OCEANVIEW DR
NEWPORT, OR 97365

CHUCK AND CAROLYN ALLEN
PO BOX 717
CAMP SHERMAN, OR 97730

PATRICIA OMAN
LEONARD SEITZ
4015 NE MULTNOMAH ST
PORTLAND, OR 97232

GARY AND SIOBHAN GRAY
521 SE KINKADE ROAD
MADRAS, OR 97741-2026

BENTLEY JR, JOHN R ET AL
C/O PATRICIA BENTLEY
1506 NW FRESNO
BEND, OR 97703-3042

RONALD AND JANE GRAYBEAL
4174 SW PATRICK PLACE
PORTLAND, OR 97239

BARBARA MCGRATH
4121 SW GREENLEAF CT
PORTLAND, OR 97221

TOM AND BARBARA HAYNES
26348 SW METOLIUS MEADOWS DR
CAMP SHERMAN, OR 97730

BRUCE AND SUSAN SHAULL
26307 SW METOLIUS MEADOWS DR
CAMP SHERMAN, OR 97730

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.

Findings of Fact

1. On May 5, 2016, multiple applicants filed an application to change the point of diversion under Certificates 68372, 68375, 69238, 72098, 86411, and 87472. The Department assigned the application number T-12370.
2. Notice of the application for transfer was published on May 17, 2016, pursuant to OAR 690-380-4000.
3. On April 10, 2017, the Department contacted the agent about a possible discrepancy with the tax lots listed in the contact sheet. On May 1, 2017, the agent clarified which applicants own tax lots 3400 and 3500.
4. On June 6, 2017, the Department mailed copies of the draft Preliminary Determination proposing to approve Transfer Application T-12370 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of July 7, 2017, for the applicants to respond. The applicants 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.
5. On August 17, 2017, the Department received an Affidavit for the Partial Cancellation of Certificate 68375 from the landowner of tax lot 1900.
6. On October 11, 2017, the applicant for tax lot 3500 requested a portion of Certificate 87472 to be removed from the transfer.
7. On October 17, 2017, the agent notified the Department that tax lot 500 has had a change of ownership. The Department requested additional information be submitted to verify the new landowner.
8. On October 26, 2017, the applicant for tax lot 3400 requested a portion of Certificate 87472 to be removed from the transfer. This request removes the entirety of Certificate 87472 from the transfer application.
9. On November 16, 2017, the Department received an Affidavit for the Partial Cancellation of Certificate 68375 from the landowner of tax lot 1800. This request cancels the entirety of Certificate 68375 and is included in this order.
10. On June 8, 2018 the Department mailed copies of the revised Draft Preliminary Determination proposing to approve Transfer Application T-12370 to the applicants. The revised draft Preliminary Determination cover letter set forth a deadline of July 8, 2018, for the applicants to respond.
11. On October 1, 2018 the agent for the applicant submitted amended application pages to the Department.
12. On March 22, 2019, the agent for the applicants requested that Certificate 69238 and Certificate 72098 be removed from Transfer Application T-12370.
13. On July 15, 2019 the agent for the applicants submitted updated ownership information for Transfer Application T-12370.

14. On July 19, 2019, the Department mailed copies of the second revised Draft Preliminary Determination proposing to approve Transfer Application T-12370 to the applicants. The second revised draft Preliminary Determination cover letter set forth a deadline of August 19, 2019, for the applicants to respond.
15. On July 30, 2019 the agent for the applicants submitted additional updated ownership information for Transfer Application T-12370 and requested that the Department reissue another Revised Draft Preliminary Determination to include the entirety of Certificate 68372.
16. On August 2, 2019, On July 19, 2019, the Department e-mailed copies of the third revised Draft Preliminary Determination proposing to approve Transfer Application T-12370 to the applicants. The third revised draft Preliminary Determination cover letter set forth a deadline of August 19, 2019, for the applicants to respond.
17. On August 6, 2019, the applicants 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.
18. On September 27, 2019, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12370 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on October 1, 2019, and in the Bend Bulletin newspaper on September 28, and October 5, 2019, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
19. The first right to be transferred is as follows:

Certificate: 68372 in the name of CLARENCE M. HANSEN (confirmed by Deschutes River (F) Decree) (Volume 9, Page 362)

Use: IRRIGATION OF 5.32 ACRES, DOMESTIC AND STOCK

Priority Date: 1888

Rate: 0.11 acre feet per acre measured at The Point Of Diversion at a rate not to exceed 0.1 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, is limited to a diversion of ONE-SIXTIETH of one cubic foot per second (or its equivalent) and 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Period of Use: MAY 1 TO SEPTEMBER 15

Source: LAKE CREEK, a tributary of the METOLIUS RIVER

Authorized Place of Use:

IRRIGATION, DOMESTIC AND LIVESTOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	9 E	WM	16	SW SE	6.53

20. Certificate 68372 does not describe the location of the point of diversion; however, information is available from the applicant and CWRE indicating the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	9 E	WM	16	SW SW	POD 1 - 7 FEET NORTH AND 2338 FEET WEST FROM THE S1/4 CORNER OF SECTION 16

21. Transfer Application T-12370 proposes to move the point of diversion approximately 0.5 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	9 E	WM	16	SW SE	POD 2 - 1177 FEET NORTH AND 44 FEET EAST FROM THE S1/4 CORNER OF SECTION 16

22. The second right to be transferred is as follows:

Certificate: 86411 in the name of CYRUS AND REBECCA FIELD (confirmed by Deschutes River (F) Decree) (Volume 9, Page 362)
Use: RECREATION, INCLUDING SWIMMING, BOATING, FISHING AND WILDLIFE ATTRACTION IN A DITCH AND THROUGH A POND ON THE WATER USER'S PROPERTY
Priority Date: 1888
Rate: 0.03 CUBIC FOOT PER SECOND
Source: LAKE CREEK, tributary to SOUTH FORK LAKE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	9 E	WM	16	SW SW	POD 1 - 7 FEET NORTH AND 2338 FEET WEST FROM THE S1/4 CORNER OF SECTION 16

Authorized Place of Use:

RECREATION, INCLUDING SWIMMING, BOATING, FISHING AND WILDLIFE ATTRACTION IN A DITCH AND THROUGH A POND ON THE WATER USER'S PROPERTY					
Twp	Rng	Mer	Sec	Q-Q	
13 S	9 E	WM	16	SW SE	

23. Transfer Application T-12370 proposes to move the authorized point of diversion approximately 0.5 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	9 E	WM	16	SW SE	POD 2 - 1177 FEET NORTH AND 44 FEET EAST FROM THE S1/4 CORNER OF SECTION 16

24. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

- 25. 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 rights are subject to forfeiture under ORS 540.610.
- 26. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-12370.
- 27. The proposed changes, as conditioned, would not result in enlargement of the rights.
- 28. The proposed changes, as conditioned, would not result in injury to other water rights.

Cancellation of Water Right

- 29. On August 17, 2017, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Barbara McGrath.
- 30. On November 16, 2017, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Chuck and Carolyn Allen.
- 31. The right to be cancelled is as follows:

Certificate: 68375 in the name of DAVE AMSBERRY FOR HIMSELF AND TRUSTEE FOR ED TIMMS AND EMMET KNICKERBOCKER FOR (perfected under Permit S-28961)

Use: IRRIGATION OF 0.44 ACRE

Priority Date: JULY 17, 1963

Rate: 0.007 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, is limited to a diversion of ONE-SIXTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: SOUTH FORK LAKE CREEK, a tributary of the METOLIUS RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	9 E	WM	16	SW SW	30 FEET NORTH AND 300 FEET EAST FROM THE SW CORNER OF SECTION 16

Authorized Place of Use to be Cancelled:

Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	9 E	WM	16	SE SE	0.44

Conclusions of Law

The change in point of diversion proposed in Transfer Application T-12370, is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right cancelled.

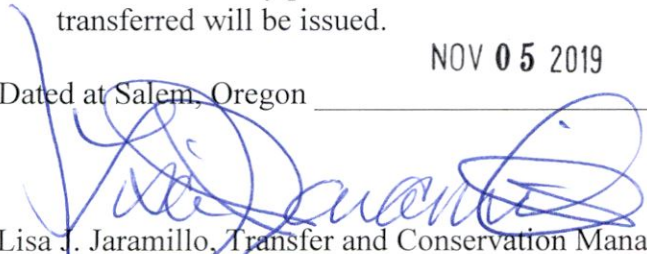
Now, therefore, it is ORDERED:

1. The change in point of diversion proposed in Transfer Application T-12370 is approved. The right that has been abandoned is cancelled.
2. Water right Certificates 68372, 68375, and 86411 are cancelled.
3. The quantity of water diverted at the new point of diversion (POD 2), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 1).
4. Water use measurement conditions:
 - a. **Before water use may begin** under this order, the water user shall install a weir, or, with prior approval of the Director, another suitable measuring device, at each new point of diversion.
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
5. Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.
6. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new point of diversion consistent with 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. 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.
8. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

NOV 05 2019

Dated at Salem, Oregon _____


Lisa J. Jaramillo, Transfer and Conservation Manager, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing Date: NOV 12 2019