# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A CHANGE
T-12584, Marion 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**

THOMAS AND MARGARET BARNETT 12814 ARNDT RD NE AURORA, OR 97002

## **Findings of Fact**

- 1. On February 3, 2017, THOMAS AND MARGARET BARNETT filed a transfer application for authorization of a historic point of appropriation under Certificate 55137. The Department assigned the application number T-12584.
- 2. Notice of the application for transfer was published on February 14, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. On November 6, 2018, the Department mailed a copy of a draft order proposing to approve Transfer Application T-12584 to the applicants.
- 4. The portion of the right to be transferred is as follows:

Certificate: 55137 in the name of RICHARD A. HAENER (perfected under Permit

G-10299)

Use: IRRIGATION OF 43.1 ACRES AND SUPPLEMENTAL IRRIGATION

OF 71.3 ACRES

Priority Date: DECEMBER 28, 1983

Rate: 0.94 CUBIC FOOT PER SECOND (CFS)

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

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.

exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year, provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.

Source:

A WELL a tributary of the Willamette River

# **Authorized Point of Appropriation:**

Tw	p Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 :	3 1 W	WM	5	NE NE	40	1060 FEET SOUTH AND 930 FEET WEST FROM NE CORNER OF SECTION 5

## **Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 W	WM	5	NW NE	40	7.2
4 S	1 W	WM	5	SW NE	40	11.8
4 S	1 W	WM	5	NE NW	40	14.8
4 S	1 W	WM	5	SE NW	40	9.3
				***	Total:	43.1

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 W	WM	5	NE NE	40	11.6
4 S	1 W	WM	5	NW NE	40	30.7
4 S	1 W	WM	5	SW NE	40	17.9
4 S 1 W WM 5 SE NE 40 11.1						
	71.3					

5. Transfer Application T-12584 proposes to change the point of appropriation southeast approximately 100 feet to reflect historical use for the above described lands to a well located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	1 W	WM	5	NE NE	40	1040 FEET SOUTH AND 190 FEET EAST FROM THE NE CORNER OF GOVERNMENT LOT 1 IN SECTION 5

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

- 6. 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. 5, has been in use for more than 10 years.
- 7. 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.
- 8. The Department did not identify any affected water rights pursuant to OAR 690-380-2120(3).

- 9. 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.
- 10. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
- 11. The proposed change would not result in enlargement of the right.
- 12. 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 transfer application T-12584 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-12584 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 55137 and any related decree.
- 3. Water right certificate 55137 is cancelled. Certificate 94074 will be issued to describe the change in point of appropriation for the right included in T-12584. Certificate 94074 shall supersede Certificate 55137.
- 4. The quantity of water diverted at the new point appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.

Dated at Salem, Oregon this	DEC 1 1 2018
Inval And	
Dwight French, Water Right S	ervices Administrator, for
Thomas M. Byler, Director	~
Oregon Water Resources Depa	rtment

Mailing date: DEC 12 2018