

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A CHANGE
T-13461, Benton County	)	IN POINT OF APPROPRIATION TO
	)	REFLECT HISTORIC USE AND PARTIAL
	)	CANCELLATION OF A WATER RIGHT
	)	CERTIFICATE

**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.

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 voluntarily request that it be cancelled.

**Applicant**

STEPHEN AND BELINDA BYLUND  
1986 SE POWELLS RD  
CORVALLIS, OR 97333

**Findings of Fact**

1. On June 8, 2020, STEPHEN AND BELINDA BYLUND filed a transfer application for authorization of an historic point of appropriation and to voluntarily cancel a portion of Certificate 24691. The Department assigned the application number T-13461.
2. Notice of the application for transfer was published on June 16, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

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.

3. The portion of the right to be transferred is as follows:

**Certificate:** 24691 in the name of H. R. WUTZKE (perfected under Permit G-239)  
**Use:** IRRIGATION of 25.5 ACRES  
**Priority Date:** APRIL 30, 1956  
**Rate:** 0.32 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 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** A WELL, a tributary of WILLAMETTE RIVER

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	4 W	WM	30	NE NW	WUTZKE WELL – SOUTH 68° 30 MINUTES EAST, 1506.5 FEET FROM THE NW CORNER OF SECTION 30

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	4 W	WM	30	NW NW	25.5

4. Transfer Application T-13461 proposes to move the authorized point of appropriation to reflect historical use, approximately 0.3 mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	4 W	WM	30	NW NW	POA 1 - 940 FEET SOUTH AND 100 FEET EAST FROM THE NW CORNER OF SECTION 30

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

5. 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. 4, has been in use for more than 10 years.
6. 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.
7. The Department did not identify any affected water rights pursuant to OAR 690-380-2120(3).
8. 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.
9. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.

10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

***Partial Cancellation of a Water Right***

12. On June 8, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Stephen F. and Belinda F. Bylund. The right to be cancelled is as follows:

**Certificate:** 24691 in the name of H. R. WUTZKE (perfected under Permit G-239)  
**Use:** IRRIGATION of 1.0 ACRE  
**Priority Date:** APRIL 30, 1956  
**Rate:** 0.01 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 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** A WELL, a tributary of WILLAMETTE RIVER

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	4 W	WM	30	NE NW	WUTZKE WELL – SOUTH 68° 30 MINUTES EAST, 1506.5 FEET FROM THE NW CORNER OF SECTION 30

**Authorized Place of Use to be Cancelled:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	4 W	WM	30	NW NW	1.0

**Conclusions of Law**

The proposed change in point of appropriation to reflect historical use in application T-13461 is consistent with the requirements of ORS 540.532, and OAR 690-380-2120 and the abandoned right is cancelled.

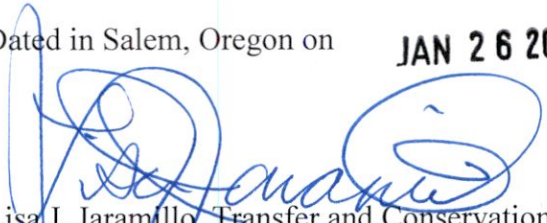
**Now, therefore, it is ORDERED:**

1. The change proposed in T-13461 is approved and effective immediately. The portion of the right that has been abandoned is cancelled.
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 24691 and any related decree.

3. Water right certificate 24691 is cancelled. Certificate 95346 will be issued to describe the change in point of appropriation for the portion of the right included in T-13461. Certificate 95347 shall be issued to describe the portion of Certificate 24691 not modified by this order. Together, the new Certificates shall supersede Certificate 24691.
4. The quantity of water diverted at the new point of appropriation (POA 1), shall not exceed the quantity of water lawfully available at the original point of appropriation (Wutzke Well).

Dated in Salem, Oregon on

**JAN 26 2021**

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

*Mailing date:*

**JAN 27 2021**