

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A CHANGE IN
T-13862, Jackson County) POINT OF DIVERSION 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

GARY R. AND JESSICA STEIN
PO BOX 798
GOLD HILL, OR 97525

Findings of Fact

1. On November 3, 2021, GARY R. AND JESSICA STEIN filed a transfer application for authorization of an historic point of diversion under Certificate 68469. The Department assigned the application number T-13862.
2. Notice of the application for transfer was published on November 16, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 10, 2023, the Department contacted the applicant by written correspondence to notify the applicant of a deficiency in the application. The application map did not identify the entirety of the portion of the right, not involved in the proposed transfer. Pursuant to OAR 690-380-3100(2)(f), the map shall include the location of any part of the right not involved in the proposed transfer. For transfers involving less than 67 percent of the entire place of use of the right, the map shall include at least the location of the portions of the right not involved in the proposed transfer which are included in the same quarter-quarter sections as the proposed transfer. The Department requested that the

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.

deficiencies be resolved by April 12, 2023. The applicants' agent submitted a revised map the same day.

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

Certificate: 68469 in the name of GENERAL DEVELOPMENT COMPANY (perfected under Permit S-18531)
Use: IRRIGATION OF 1.85 ACRES
Priority Date: OCTOBER 28, 1948
Rate: 0.012 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-EIGHTIETH of one cubic foot per second (or its equivalent) and 4.5 acre-feet for each acre irrigated during the irrigation season of each year FROM APRIL 2 TO OCTOBER 31 OF EACH YEAR.
Period of Use: APRIL 2 TO OCTOBER 31
Source: THE ROGUE RIVER, a tributary of THE PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
36 S	3 W	WM	13	SW NE	2	POD 1 - 1550 FEET SOUTH AND 2340 FEET WEST FROM THE NE CORNER OF SECTION 13

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
36 S	3 W	WM	13	NW NE		13	0.03
36 S	3 W	WM	13	NE NW	1		1.82
						Total	1.85

5. Transfer Application T-13862 proposes to move the authorized point of diversion approximately 1,085 feet downstream to reflect historical use to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
36 S	3 W	WM	13	NE NW	1	POD 2 - 800 FEET SOUTH AND 3125 FEET WEST FROM THE NE CORNER OF SECTION 13

6. 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 (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 diversion 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 diversion, prior to the transfer request.
9. Pursuant to OAR 690-380-2120(3), the Department provided the applicant a list of the affected water rights and a copy of the notice to be provided to each affected water right holder. The applicant has provided written proof of service of notice of the proposed transfer on all affected water right holders.
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 proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

Conclusions of Law

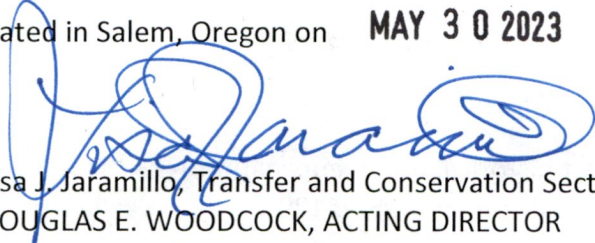
The proposed change in point of diversion to reflect historical use in application T-13862 is consistent with the requirements of ORS 540.532, and OAR 690-380-2120.

Now, therefore, it is ORDERED:

1. The change proposed in T-13862 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 6846968469 and any related decree.
3. Water right Certificate 68469 is cancelled. Certificate 97007 will be issued to describe the change in point of diversion for the portion of the right included in T-13862. Certificate 97008 shall be issued to describe the portion of Certificate 68469 not modified by this order. Together, Certificates 97007 and 97008 shall supersede Certificate 68469.
4. 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).

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 October 1, 2024, 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.

Dated in Salem, Oregon on **MAY 30 2023**



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR
Oregon Water Resources Department

Mailing date: **MAY 31 2023**