

BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of Transfer Application)
T-14193, Jackson County)
) FINAL ORDER APPROVING A CHANGE IN
) 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 AND KENDRA WEST
PO BOX 2231
WHITE CITY, OR 97503

Findings of Fact

1. On April 19, 2023, GARY AND KENDRA WEST filed a transfer application for authorization of an historic point of diversion under Certificate 87044. The Department assigned the application number T-14193.
2. Notice of the application for transfer was published on March 28, 2023, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The right to be transferred is as follows:

Certificate: 87044 in the name of GARY WEST (perfected under Permit S-3727)
Use: IRRIGATION of 6.8 ACRES
Priority Date: MARCH 7, 1918
Rate: 0.09 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 for each

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.

acre irrigated, and shall be further limited to a diversion of not to exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: SOUTH FORK LITTLE BUTTE CREEK, tributary to LITTLE BUTTE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	2 E	WM	33	NE SW	POD 2 - SOUTH 79 DEGREES 45 MINUTES EAST, 2045 FEET FROM THE W1/4 CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	2 E	WM	32	SE NE	2.27
36 S	2 E	WM	33	SW NW	4.26
36 S	2 E	WM	33	SE NW	0.27
Total					6.80

- Transfer Application T-14193 proposes to move the authorized point of diversion to reflect historical use, approximately 2757 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	2 E	WM	33	SW NW	POD 1 - 1185 FEET NORTH AND 560 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 33

- 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)

- 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. 4, has been in use for more than 10 years.
- 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.
- The Department did not identify any affected water rights pursuant to OAR 690-380-2120(3).
- 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 diversion to reflect historical use in application T-14193 is consistent with the requirements of ORS 540.532, and OAR 690-380-2120.

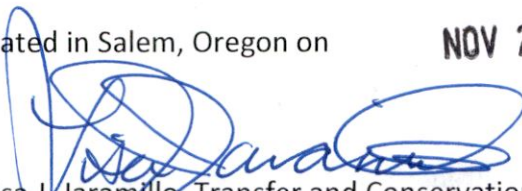
Now, therefore, it is ORDERED:

1. The change proposed in T-14193 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 87044 and any related decree.
3. Water right certificate 87044 is cancelled. Certificate 97484 will be issued to describe the change in point of diversion for the right included in T-14193. The new Certificate shall supersede Certificate 87044.
4. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
5. Water use measurement conditions:
 - a. Prior to October 1, 2025, 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, with the exception that water rights issued to the Bureau of Reclamation or an irrigation district (or similar entity) are not subject to this condition.
 - 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, 2025, 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

NOV 21 2023



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

Mailing date:

NOV 22 2023