

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

In the Matter of Transfer Application) **FINAL ORDER**
T-12188, Deschutes County) **APPROVING A CHANGE IN PLACE**
) **OF USE**

Authority

Oregon Revised Statute (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, place of use, or character of use authorized under an existing water right. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

Applicant

CITY OF SISTERS
PO BOX 39
SISTERS, OR 97759

Receiving Landowner

SKI POND RANCH, LLC
C/O DAVID HERMAN
1775 W. STATE ST.
BOISE, ID 83702

Findings of Fact

1. On October 26, 2015, CITY OF SISTERS filed an application to change the place of use under Certificate 87345. The Department assigned the application number T-12188.
2. Ski Pond Ranch, LLC (David Herman) is the receiving landowner who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on November 3, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On January 21, 2016, the Department sent a copy of the Draft Preliminary Determination proposing to approve Transfer Application T-12188 to the applicant. The Draft Preliminary Determination cover letter set forth a deadline of February 22, 2016, for the applicant to respond. The applicant 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.

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.

5. On June 7, 2016, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12188 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on July 14, 2016 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

Certificate: 87345 in the names of SHARON AMESTOY (AMESTOY RANCH LLC), CITY OF SISTERS, STEVEN AND CINDY GREER, LAXY Z RANCH (c/o JAY POULOS), MURRAY GRAY LLC (c/o MURRAY HERMAN), AND SKI POND RANCH LLC (c/o DAVID HERMAN) (perfected under Permit G-4841)

Use: IRRIGATION OF 3.1 ACRES

Priority Date: AUGUST 25, 1970

Rate: 0.039 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 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: A WELL within the WHYCHUS CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	14	NW NW	Well 2 - 290 FEET SOUTH AND 140 FEET EAST FROM THE NW CORNER OF SECTION 14

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	15	NE NE	3.1

7. A scrivener's error was found on Certificate 87345. Certificate 87345 describes the location of the City of Sisters irrigation as:

IRRIGATION - CITY OF SISTERS							
Source	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
Well 2	15 S	10 E	WM	15	NE NE	200	5.0
Well 2	15 S	10 E	WM	15	SE NE	200	11.1

Special Order Volume 85 page 721 voluntarily canceled a portion of the irrigated acres. The City of Sisters canceled 1.9 acres in the NE NE and 11.1 acres in the SE NE of Section 15. Certificate 87345 should be described as:

IRRIGATION - CITY OF SISTERS							
Source	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
Well 2	15 S	10 E	WM	15	NE NE	200	3.1

8. Transfer Application T-12188 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	14	SW NE	3.1

Transfer Review Criteria (OAR 690-380-4010)

9. 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 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 were present within the five-year period prior to submittal of Transfer Application T-12188.
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.
13. All other application requirements are met.

Conclusions of Law

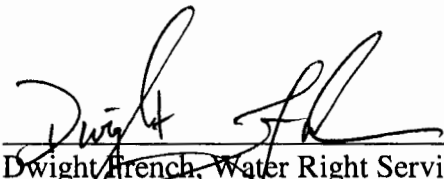
The change in place of use proposed in Transfer Application T-12188 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in Transfer Application T-12188 is approved.
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 87345 and any related decree.
3. Water right Certificate 87345 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. 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 appropriation (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.

5. The former place of use of the transferred right shall no longer receive water under the right.
6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. 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.
7. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 18 day of July, 2016.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing date: JUL 21 2016