

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-12909, Deschutes County)	CHANGE IN PLACE OF USE AND
)	POINT OF APPROPRIATION,
)	PARTIAL DIMINUTION OF A WATER
)	RIGHT AND PARTIAL
)	CANCELLATION OF A WATER
)	RIGHT

Authority

Oregon Revised Statutes (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 Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating 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

MARC AND PAMELA THALACKER
70625 NW LOWER BRIDGE WAY
TERREBONNE, OR 97760

Receiving Landowner

LAURA ANN McCALLUM TRUST
69401 GOODRICK ROAD
SISTERS, OR 97759

Findings of Fact

1. On April 20, 2018, Marc and Pamela Thalacker filed an application to change the place of use and to change the point of appropriation under Certificates 74139, 74196 and 75762. The Department assigned the application number T-12909.
2. Laura Ann McCallum Trust is the receiving landowner who will be responsible for completion of the changes.
3. On March 27, 2018, the Department determined that the lands under Certificates 74139 and 74196 proposed for changing place of use, were not subject to transfer due to non-use of water since 2011. The Department requested to have the lands described withdrawn from

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.

Transfer Application T-12909, and provided an Affidavit for the Voluntary Cancellation of a Portion of a Water Right Certificate for each certificate to the applicant.

4. Notice of the application for transfer was published on May 1, 2018, pursuant to OAR 690-380-4000. Two timely comments were filed in response to the notice and summarized as follows:
 - The proposed transfer would result in the enlargement of the existing supplemental groundwater rights proposed to be transferred, as none of the three supplemental water rights seem to be appurtenant to an underlying primary right;
 - Supplemental groundwater permits are quickly becoming obsolete and can no longer be put to beneficial use;
 - The water is publicly owned. If groundwater rights can no longer be put to a beneficial use, exercising those rights is no longer necessary or practical, and the water should be left in the ground to support the local springs and streams;
 - The proposed supplemental groundwater rights transfer would move an obsolete groundwater right from one sub-basin to another separate sub-basin that has been closed from further appropriation; and
 - This seems to be a proposed transfer of a supplemental groundwater right to use as a new primary water right in an area where the groundwater is no longer subject to appropriation.
5. On March 27, 2019, the Department informed the applicant that lands proposed for transfer under Certificates 74139 and 74196, are subject to cancellation due to non-use since 2011 when the underlying primary rights were removed. The Department indicated withdrawing the certificates from the application and submitting affidavits for partial cancellation would resolve the deficiencies.
6. On April 23, 2019, the Department contacted the applicant by written correspondence regarding the withdrawal of Certificates 74139 and 74196 and the affidavits for partial cancellation, as the Department had not received a response from the applicant.
7. On May 23, 2019, the applicant informed the Department to proceed with the withdrawal of Certificates 74139 and 74196 from T-12909.
8. On May 31, 2019, the Department received an Affidavit for the Voluntary Cancellation of a Portion of a Water Right Certificate for Certificates 74139 and 74196.
9. On November 5, 2019, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent, that a revised application and map identifying Certificate 75762 as the only water right being transferred, would need to be submitted. The Department requested that the revised application be submitted by December 6, 2019.

10. On January 8, 2020, the applicant submitted a revised application and map which identified Certificate 75762 as the only water right to be transferred, resolving all deficiencies.
11. On January 30, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12909 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 3, 2020, for the applicants to respond. The applicants 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.
12. On June 23, 2020, the Department issued a Preliminary Determination proposing to approve Transfer T-12909 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on June 30, 2020, and in The Bulletin newspaper on June 26 and July 3, 2020 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

Certificate: 75762 in the name of DESCHUTES VALLEY FARMS (perfected under Permit G-4396)
Use: SUPPLEMENTAL IRRIGATION of 32.5 ACRES
Priority Date: APRIL 15, 1969
Rate: 0.4063 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, 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 in the DESCHUTES RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
14 S	12 E	WM	17	SW NW	WELL 9 - 20 FEET SOUTH AND 980 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 17

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
14 S	12 E	WM	17	SW NW	32.5

13. Transfer Application T-12909 proposes to change the point of appropriation for the right approximately 6 ¾ miles to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
14 S	11 E	WM	31	SE NE	PROPOSED POA - 50 FEET NORTH AND 1320 FEET WEST FROM E¼ CORNER OF SECTION 31

14. Transfer Application T-12909 also proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
14 S	11 E	WM	31	NE SE	9.9
14 S	11 E	WM	31	SE SE	22.6
Total					32.5

Transfer Review Criteria (OAR 690-380-4010)

- 15. Water has been used within the five years prior to the submittal of Transfer Application T-12909 according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
- 16. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-12909.
- 17. The proposed change would not result in enlargement of the rights.
- 18. The proposed change would not result in injury to other water rights.
- 19. All other application requirements are met.

Diminution of a Certain Water Right

20. On April 20, 2018, the agent for the applicant stated they would like to bring in a more senior priority date as their primary water right and requested the Department diminish a portion of Certificate 74140 for 32.5 acres of primary irrigation to supplemental irrigation.

The right proposed to be diminished from primary irrigation to supplemental irrigation is described as follows:

- Certificate:** 74140 in the name of MARC AND PAMELA THALACKER (perfected under Permit G-4396)
- Use:** IRRIGATION of 32.5 ACRES
- Priority Date:** April 15, 1969
- Rate:** 0.41 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 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
- Source:** WELL #9 in the DESCHUTES RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
14 S	12 E	WM	17	SW NW	20 FEET SOUTH AND 980 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 17

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
14 S	12 E	WM	17	SW NW	32.5

Partial Cancellation of a Water Right

21. On April 20, 2018, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Marc and Pamela Thalacker. The right to be cancelled is as follows:

Certificate: 75762 in the name of DESCHUTES VALLEY FARMS (perfected under Permit G-4396)
Use: SUPPLEMENTAL IRRIGATION of 0.2 ACRES
Priority Date: APRIL 15, 1969
Rate: 0.0003 CUBIC FEET 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 in the DESCHUTES RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
14 S	12 E	WM	17	SW NW	WELL #9 - 20 FEET SOUTH AND 980 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 17

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
14 S	12 E	WM	17	SW NW	0.2

22. On May 31, 2019, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Marc and Pamela Thalacker. The right to be cancelled is as follows:

Certificate: 74139 in the name of MARC AND PAMELA THALACKER (perfected under Permit G-8683)
Use: SUPPLEMENTAL IRRIGATION of 7.5 ACRES
Priority Date: OCTOBER 18, 1979
Rate: 0.09 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation is 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL in the DESCHUTES RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
14 S	12 E	WM	17	SW NW	WELL #9 - 20 FEET SOUTH AND 980 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 17

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
14 S	12 E	WM	7	SW SE	4.0
14 S	12 E	WM	7	SE SE	3.5
Total					7.5

23. On May 31, 2019, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Marc and Pamela Thalacker. The right to be cancelled is as follows:

Certificate: 74196 in the name of MARC AND PAMELA THALACKER (perfected under Permit G-4396)

Use: SUPPLEMENTAL IRRIGATION of 12.5 ACRES

Priority Date: APRIL 15, 1969

Rate: 0.16 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 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: WELL #9 in the DESCHUTES BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
14 S	12 E	WM	17	SW NW	WELL #9 - 20 FEET SOUTH AND 980 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 17

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
14 S	12 E	WM	18	NW SE	12.5

Conclusions of Law

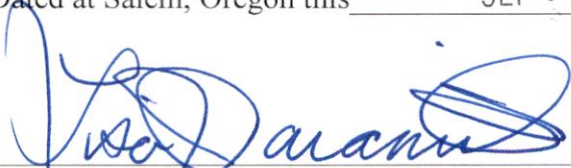
The change in place of use and change in point of appropriation proposed in Transfer Application T-12909 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. The right requested to be diminished should be diminished to supplemental irrigation and the abandoned portion of the right should be cancelled.

Now, therefore, it is ORDERED:

1. The change in place of use and change in point of appropriation proposed in Transfer Application T-12909 are approved. Those portions of Certificates 74139, 74196, and 75762 that have been abandoned are cancelled. Certificate 74140 is diminished.

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 75762 and any related decree.
3. Water right Certificate 75762 is cancelled. A new certificate will be issued describing those portions of the right not affected by this transfer and cancellation.
4. The quantity of water diverted at the new point of appropriation (Proposed POA) shall not exceed the quantity of water lawfully available at the original point of appropriation (Well #9).
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 new point of appropriation.
 - 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. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
7. The former place of use of the transferred right shall no longer receive water under the right.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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 changes and full beneficial use of the water.
9. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this SEP 01 2020.



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

Mailing date: SEP 02 2020