

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

In the Matter of Transfer Application)	RECONSIDERATION OF A FINAL
T-13414, Douglas County)	ORDER RECORDED IN SPECIAL
)	ORDER VOLUME 118, PAGES 268 -
)	271, WITHDRAWING A FINAL
)	ORDER AND ISSUING A
)	SUPERSEDING FINAL ORDER
)	APPROVING A CHANGE IN POINT
)	OF DIVERSION

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, 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.

Applicant

MARTIN DANG
407 BRADY HILL LANE
AZALEA, OR 97410

Findings of Fact

1. On April 15, 2020, MARTIN DANG filed an application to change the point of diversion under Certificate 5319. The Department assigned the application number T-13414.
2. Notice of the application for transfer was published on April 28, 2020, pursuant to OAR 690-380-4000. One comment was filed timely in response to the notice, which raised the issue that removal of additional water may reduce head pressure in the ditch.
3. The issue raised by the commenter in Finding of Fact #2 does not address the criteria for review of a water right transfer as per OAR 690-380-4010 and approval of a transfer application under OAR 690-380-5000. The statutory basis for approving a water right transfer application is relatively narrow and confined to the Department finding or determining:
 - a) The water right proposed for transfer is a water use subject to 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.

- b) The portion of the water right proposed for transfer is not cancelled due to forfeiture for non-use pursuant to ORS 540.610;
 - c) The proposed transfer would not result in enlargement of the water right proposed for transfer; and
 - d) The proposed transfer would not result in injury to other water rights.
4. On September 3, 2020, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13414 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 3, 2020, 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.
 5. On November 19, 2020, the Department issued a Preliminary Determination proposing to approve Transfer Application T-13414 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 November 24, 2020, and in the News Review newspaper on November 25 and December 2, 2020, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
 6. On December 31, 2020, the Department issued a Final Order to Approve Transfer Application T-13414 for a Change in Point of Diversion recorded in Special Order Volume 118, Pages 268 to 271.
 7. On January 8, 2021 the Department on its own volition reconsidered, because the Final Order was issued one day before the end of the protest period of January 1, 2021. Because the protest period ended on January 1, 2021, a national holiday, the protest period would be extended to the next business day being January 4, 2021. No protests were filed in response to the notice.
 8. This order is issued to supersede the previous order recorded at Special Order Volume 118, Pages 268 to 271.
 9. The portion of the right to be transferred is as follows:
 - Certificate:** 5319 in the name of JOHN JACKSON (perfected under Permit S-4875)
 - Use:** IRRIGATION of 18.0 ACRES
 - Priority Date:** NOVEMBER 17, 1920
 - Rate:** 0.23 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 in case of rotation.
 - Source:** COW CREEK, a tributary of SOUTH UMPQUA RIVER

Authorized Point of Diversion:

NOT SPECIFIED ON CERTIFICATE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	14	NW SE	18.0

10. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 5319 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
32 S	5 W	WM	13	NE NW	1386 FEET SOUTH AND 7.41 CHAINS WEST FROM THE S1/4 BETWEEN SECTION 12 AND SECTION 13

11. Transfer Application T-13414 proposes to move the authorized point of diversion approximately 0.9 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
32 S	5 W	WM	13	NE NW	806 FEET SOUTH AND 622 FEET EAST FROM THE C1/4 OF SECTION 14

12. 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 [OAR 690-380-4010(2)]

- 13. 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.
- 14. A diversion structure and ditch 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-13414.
- 15. The proposed change would not result in enlargement of the right.
- 16. The proposed change would not result in injury to other water rights.
- 17. All other application requirements are met.

Conclusions of Law

The change in point of diversion proposed in Transfer Application T-13414 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The order recorded at Special Order Volume 118, Pages 268 to 271 is withdrawn, is of no further force or effect, and is superseded by this order.
2. The change in point of diversion proposed in Transfer Application T-13414 is approved.
3. 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 5319 and any related decree.
4. Water right Certificate 5319 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
5. 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.
6. 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.
 - 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.
7. Prior to diverting water, 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.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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.

9. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on

FEB 10 2021



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

Mailing date: **FEB 11 2021**