

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING OF
T-12517, Josephine County)	CHANGES IN PLACE OF USE,
)	CHARACTER OF USE, AND PARTIAL
)	CANCELLATION OF A WATER
)	RIGHT

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

PACIFICA - A GARDEN IN THE SISKIYOUUS
PO BOX 1
WILLIAMS, OR 97544

Findings of Fact

1. On October 31, 2016, Pacifica - A Garden in the Siskiyou filed an application to change the place of use under Certificates 27471 and 42083, and to change the place of use and character of use under Certificate 81585. The Department assigned the application number T-12517.
2. Notice of the application for transfer was published on November 8, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 20, 2017, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of the deficiencies in the application. The Department requested that the deficiencies be resolved by October 21, 2017.
4. On October 5, 2017, the applicant's agent submitted revised application tables and an application map.

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 October 13, 2017, the Department contacted the applicant's agent asking for clarification of one the revised application tables and signed revised application maps to be submitted to the Department.
6. On November 2, 2017, the Department received a revised Table 2 and maps.
7. On May 8, 2018, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of the deficiencies in the application. The Department requested that the deficiencies be resolved by June 8, 2018.
8. On June 22, 2018, the Department received a revised Table 2 and map, and an Affidavit for the Voluntary Cancellation of a Portion of a Water Right Certificate which corrected the deficiencies.
9. On July 25, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12517 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 24, 2018, for the applicant to respond.
10. On August 22, 2018, the applicant requested additional time to respond to the draft Preliminary Determination. The Department set forth a deadline of September 28, 2018.
11. On September 26, 2018, the applicant requested to extend the date for completion to October 1, 2022. The applicant also 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 October 22, 2018, the Department issued a Preliminary Determination proposing to approve Transfer T-12517 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 October 23, 2017, and in the Grants Pass Daily Courier newspaper on October 25 and November 1, 2018 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
13. The portion of the first right to be transferred is as follows:

Certificate: 27471 in the name of E. N. LIPPERT (perfected under Permit S-24106)
Use: SUPPLEMENTAL IRRIGATION OF 9.3 ACRES
Priority Date: MAY 3, 1956
Rate: 19.68 ACRE-FEET FROM STORED WATER
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 for each acre irrigated from direct flow 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 from direct flow and storage from reservoir constructed under permit number R-1845 and shall be still

further limited to the use of stored water only on lands described as supplemental.

Source: LIPPERT RESERVOIR CONSTRUCTED UNDER APPLICATION R-30242, PERMIT R-1845, a tributary of WILLIAMS CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
38 S	5 W	WM	15	NW NE

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	5 W	WM	11	SW SE	9.3

14. Certificate 27471 does not describe the specific location of the point of diversion; however, information available from the applicant indicates the point of diversion is better described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	5 W	WM	15	SW NE	1514 FEET SOUTH AND 1484 FEET WEST FROM THE NE CORNER OF SECTION 15

15. Transfer Application T-12517 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	5 W	WM	11	SE SW	4.9
38 S	5 W	WM	14	NE NW	2.8
38 S	5 W	WM	14	NW NW	1.6
Total					9.3

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

Certificate: 42083 in the name of MADRONE RANCH c/o ALBERT BROUGHTON AND JAMES R. HARRELL (perfected under Permit S-29336)

Use: SUPPLEMENTAL IRRIGATION OF 12.2 ACRES

Priority Date: JUNE 15, 1962

Rate: 8.1 ACRE-FEET STORED WATER ONLY

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 a diversion of 4.5 acre feet for each acre irrigated during the irrigation season of each year; provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Source: LIPPERT RESERVOIR NO. 2, CONSTRUCTED UNDER APPLICATION NO. R-37246, PERMIT NO. R-3942, a tributary of WILLIAMS CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	5 W	WM	11	SW SW	2420 FEET SOUTH AND 1400 FEET WEST FROM THE CENTER OF SECTION 11

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	5 W	WM	11	SW SE	10.4
38 S	5 W	WM	11	SE SE	1.8
Total					12.2

17. Certificate 27471 describes the specific location of the point of diversion; however, information is available from the applicant indicating the point of diversion is better described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	5 W	WM	11	SW SW	358 FEET NORTH AND 1164 FEET EAST FROM THE SW CORNER OF SECTION 11

18. Transfer Application T-12517 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	5 W	WM	14	NW NE	2.2
38 S	5 W	WM	14	NE NW	5.0
38 S	5 W	WM	14	NW NW	5.0
Total					12.2

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

Certificate: 81585 in the name of MARTHA MESSINGER AND HEIRS OF SIMON MESSINGER, DECEASED (confirmed by Rogue River (F) Decree)
Use: IRRIGATION OF 33.5 ACRES in TRACT NO. 2
Priority Date: 1867
Rate: 0.56 CUBIC FOOT PER SECOND (cfs) from POWELL CREEK for TRACT NO. 2
Source: POWELL CREEK, a tributary of WILLIAMS CREEK for TRACT 2

Authorized Point of Diversion:

Survey Coordinates
TRACT 2; MESSINGER DITCH from POWELL CR

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	5 W	WM	11	SE SE	20.6
38 S	5 W	WM	11	SW SE	12.9
Total					33.5

20. Certificate 81585 describes the location of the point of diversion; however information is available from the applicant indicating the point of diversion is better described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	5 W	WM	15	SW NE	1514 FEET SOUTH AND 1484 FEET WEST FROM THE NE CORNER OF SECTION 15

21. Transfer Application T-12517 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	5 W	WM	11	SE SW	4.9
38 S	5 W	WM	14	NW NW	10.6
38 S	5 W	WM	14	NE NW	6.7
38 S	5 W	WM	14	NW NE	9.1
Total					31.3

22. Transfer Application T-12517 also proposes to change the character of use of the right to:

NURSERY					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	5 W	WM	11	SW SE	0.2
38 S	5 W	WM	11	SE SE	2.0
Total					2.2

23. The proposed NURSERY use shall be limited to a rate of not to exceed 0.04 cfs and shall be further limited to a total volume diverted of 17.0 Acre-Feet (AF) per year, being 7.72 AF per acre per year.
24. Certificate 81585 does not specify the period of allowed use, however irrigation is considered to be a use with the season being from April 1 through October 31, as stated in the Rogue River (F) State Water Board Decree. The change in character of use to nursery is limited to April 1 through October 31.

Transfer Review Criteria [OAR 690-380-4010(2)]

25. 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 rights are subject to forfeiture under ORS 540.610.
26. 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-12517.
27. The proposed changes as conditioned would not result in enlargement of the rights.
28. The proposed changes would not result in injury to other water rights.

Partial Cancellation of a Water Right

29. On June 22, 2018, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Ray Prag, President of the Board of Directors of Pacifica – A Garden in the Siskiyou. The right to be cancelled is as follows:

Certificate: 81585 in the name of MARTHA MESSINGER AND HEIRS OF SIMON MESSINGER, DECEASED (confirmed by Rogue River (F) Decree)
Use: IRRIGATION of 2.4 ACRES
Priority Date: 1867
Rate: 0.04 CUBIC FOOT PER SECOND
Source: POWELL CREEK, a tributary of WILLIAMS CREEK for TRACT 2

Authorized Point of Diversion:

Survey Coordinates
TRACT 2; MESSINGER DITCH from POWELL CR

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	5 W	WM	11	SE SE	2.4

Conclusions of Law

The change in place of use and change in character of use proposed in Transfer Application T-12517 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled.

Now, therefore, it is ORDERED:

1. The changes in place of use and change in character of use proposed in Transfer Application T-12517 are approved. The portion of the right that has been abandoned is cancelled.
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 Certificates 27471, 42083, and 81585 and any related decree.
3. Water right Certificates 27471, 42083, and 81585 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.
4. The rate of diversion for the proposed nursery use shall be limited to 0.04 cubic foot per second and shall be further limited to a total quantity of 17.0 acre feet during the entire year.
5. The proposed nursery use shall be further limited such that:
 - a) The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.04 cubic foot per second per acre and $(17.0 \text{ af} \div 2.2 \text{ acres})$ 7.72 acre feet per acre per year.

- b) For the irrigation of containerized nursery plants, the amount of water diverted is limited to 0.04 cubic foot per second (or its equivalent) and 7.72 acre feet per acre per year.
- c) For the irrigation of in-ground nursery plants, the amount of water diverted is limited to 0.04 cubic foot per second (or its equivalent) and 7.72 acre feet per acre per year.
- d) For the irrigation of any other crop, the amount of water diverted is limited to 0.04 cubic foot per second (or its equivalent) and 4.5 acre feet per acre during the irrigation season of each year. The use of water for irrigation of any other crop shall be limited to 2.2 acres.

6. Water use measurement conditions:

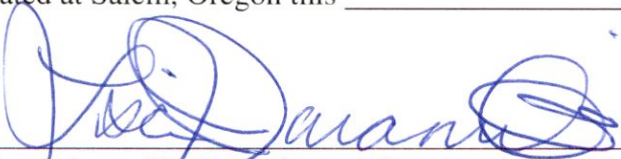
- a. Before water use may begin under this order, the water user shall install a meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion (new and existing).
- b. The water user shall maintain the meters or measuring devices in good working order.
- 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.

7. The former place of use of the transferred rights shall no longer receive water under the rights.

8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this DEC 06 2019.



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

Mailing date: DEC 09 2019