

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-12793, Linn County)	CHANGE FROM A SURFACE WATER
)	POINT OF DIVERSION TO A
)	GROUNDWATER POINT OF
)	APPROPRIATION

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

WILLIAM RADKE
PO BOX 15
SHEDD, OR 97377

Findings of Fact

1. On December 18, 2017, WILLIAM RADKE filed an application to change from a surface water point of diversion to a groundwater point of appropriation under Certificate 30011. The Department assigned the application number T-12793.
2. Notice of the application for transfer was published on December 26, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 25, 2019, 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 February 25, 2019.
4. On February 4, 2019, the applicant submitted an Evidence of Use affidavit with supporting documentation, and a revised Table 1, resolving the deficiencies.

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 February 14, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-12793 to the applicant, for failure to meet the requirements of ORS 540.531(2)(C)(D)(b) and OAR 690-380-2130(2)(c)(d)(e). The draft Preliminary Determination cover letter set forth a deadline of March 15, 2019, for the applicant to respond.
6. On March 8, 2019, the applicant's agent submitted a revised application and map, removing proposed Well 1 from the application. 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.
7. On April 15, 2019, the applicant requested to extend the completion date to October 1, 2025.
8. On May 17, 2019, the Department issued a Preliminary Determination proposing to approve Transfer T-12793 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 May 21, 2019, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
9. The right to be transferred is as follows:

Certificate: 30011 in the name of ALBERT L. and BETH GREGORY (perfected under Permit S-26638)
Use: IRRIGATION of 47.9 ACRES
Priority Date: MARCH 8, 1960
Rate: 0.45 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 for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: OWL CREEK, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
11 S	4 W	WM	31	SW NE	2	NONE GIVEN

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
11 S	4 W	WM	31	NW NE		87	0.4
11 S	4 W	WM	31	SW NE	2		0.2
11 S	4 W	WM	31	SW NE		87	14.6
11 S	4 W	WM	31	NE NW		87	0.7
11 S	4 W	WM	31	SE NW		87	30.5
11 S	4 W	WM	31	NE SW		87	1.2

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
11 S	4 W	WM	31	NW SE		87	0.3
						Total	47.9

10. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 30011 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
11 S	4 W	WM	31	SW NE	NORTH 3 DEGREES EAST 800 FEET FROM THE SW CORNER OF WILLIAM HITE DLC 71

11. Transfer Application T-12793 proposes to change from a surface water point of diversion to a groundwater point of appropriation (well) as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
11 S	4 W	WM	31	NW NE	87	WELL #4 - 2891 FEET NORTH AND 14 FEET EAST FROM THE SE CORNER OF CHARLES MULKEY DLC 87
11 S	4 W	WM	31	SW NE	87	WELL #2 - 2073 FEET NORTH AND 77 FEET EAST FROM THE SE CORNER OF CHARLES MULKEY DLC 87
11 S	4 W	WM	31	SW NE	87	WELL #3 - 2595 FEET NORTH AND 18 FEET EAST FROM THE SE CORNER OF CHARLES MULKEY DLC 87

12. Approximate distance from the original surface water point of diversion to the groundwater points of appropriation in feet (ft.):

Well	Approximate Distance
#4	520.9 ft. Northwest
#2	309.7 ft. Southwest
#3	235.8 ft. Northwest

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 pump, hose reel, 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-12793.
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

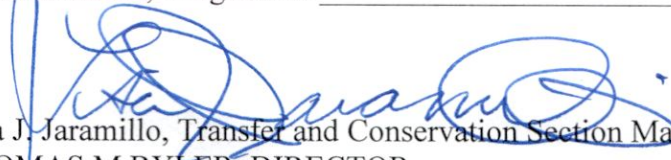
The change from a surface water point of diversion to groundwater points of appropriation proposed in Transfer Application T-12793 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change from a surface water point of diversion to groundwater points of appropriation proposed in Transfer Application T-12793 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 30011 and any related decree.
3. Water right Certificate 30011 is cancelled.
4. The quantity of water diverted at the new points of appropriation (Well #2, #3, or #4), shall not exceed the quantity of water lawfully available at the original point of diversion (Owl Creek).
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. All applicable restrictions that existed at the original point of diversion shall apply to the proposed well.
7. The original date of priority shall be retained. However, if within five years after approving the transfer, the Department finds that the transfer results in substantial interference with existing groundwater rights that would not have occurred in the absence of the transfer, the proposed well shall be subordinate to any existing right injured by the transferred water right.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2025**. 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 at Salem, Oregon this JUL 01 2019,


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

JUL 02 2019
Mailing date: _____