

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

| | | |
|---------------------------------------|---|-------------------------------------|
| In the Matter of Transfer Application |) | FINAL ORDER APPROVING A CHANGE IN |
| T-13369, Umatilla County |) | POINTS OF APPROPRIATION AND PARTIAL |
| |) | DIMINUTION OF CERTAIN WATER RIGHTS |
| |) | |
| |) | |

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.

Applicant

JOHN AND LINDA VANDREE,
TRUSTEES REVOCABLE LIVING TRUST
OF JOHN C. VANDREE AND
LINDA K. VANDREE, 1998
812 GRAND AVENUE
EVERETT, WASHINGTON 98201

Agent

JASON MELADY, CWRE
GSI WATER SOLUTIONS, INC.
55 SW YAMHILL ST., SUITE 300
PORTLAND, OR 97204

Findings of Fact

1. On February 14, 2020, John and Linda Vandree filed an application to change the point of appropriation n under a portion of Certificate 89896. The Department assigned the application number T-13369.
2. Notice of the application for transfer was published on February 25, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 9, 2020, the Department sent a letter to the applicant addressing multiple issues including the need to amend the application to include an additional layered right, multiple stacked primaries and mapping errors. The letter set forth a deadline of November 8, 2020, for the applicant to respond.

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.

4. On December 7, 2020, the agent for the applicant requested an additional 14 days to address the mapping problems and to complete the transfer and submit the needed items requested. The Department approved an additional 14 days in which to complete the needed revisions and gave the applicant until December 21, 2020, to submit the items necessary to continue processing the application.
5. On December 24, 2020, the agent for the applicant submitted a revised application and associated map amending the application to include a change in point of appropriation for Certificate 30638 and submitted the appropriate filing fees. This revision remedies a conflict with an existing right that was revealed in the Department's initial review.
6. On February 12, 2021, the applicant submitted a revised application amending the place of use for Certificate 89896.
7. Also on February 12, 2021, the applicant submitted two voluntary diminution affidavits to diminish portions of Certificates 89896 and 30638 from primary irrigation to supplemental irrigation. The revisions and diminishment affidavits together resolve the multiple stacked primary water right issues noted in the Department's October 9, 2020, letter to the applicant. See Findings of Fact #23 and 24 below for further details on the diminutions.
8. On February 16, 2021, the Department issued a Draft Preliminary determination proposing to approve Transfer Application T-13369; following the issuance of the Draft Preliminary Determination for T-13369 the Department received a request from the applicant to extend the time to develop the proposed well to October 1, 2027.
9. The applicant also requested that the new wells' conditions be amended, to include language that give the applicants additional and more feasible guidance to attain compliance with the Departments' requirements.
10. On April 20, 2021, the Department issued a Revised Draft Preliminary Determination amending the conditions and allowing extra time for the applicants to develop the well in accordance with the Departments revised conditions. The applicant was given 30 days to respond to the Revised Draft Preliminary Determination, the applicant accepted the revised conditions and requested the Department proceed with the Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
11. On June 14, 2021, the Department issued a Preliminary Determination proposing to approve Transfer T-13369 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 15, 2021, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

Certificate: 89896 in the name of T. O. WILLIAMS & ASSOCIATES (C/O) RAY WILLIAMS;
JOHN C. & LINDA K. VANDREE (perfected under Permit G-13697)

Use: IRRIGATION of 42.8 ACRES and SUPPLEMENTAL IRRIGATION
of 115.4 ACRES

Priority Date: APRIL 20, 1998

Rate: 0.497 CUBIC FOOT PER SECOND (cfs) for PRIMARY IRRIGATION OF 42.8
ACRES, 0.09 CFS for SUPPLEMENTAL IRRIGATION OF 115.4 ACRES to make
up a deficiency in rate from the Basalt aquifer

Period of Use: March 1 through October 31

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) and 3.0 ACRE-FEET per acre for each acre irrigated during the
irrigation season of each year.

Source: WILLIAMS WELL 4 within the SWARTZ SPRING CREEK and PINE CREEK
BASINS

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q - Q | Measured Distances |
|-----|------|-----|-----|--------|---|
| 6 N | 34 E | WM | 35 | NE* NW | WILLIAMS WELL 4 (UMAT 4177/ BASALT) 1290 FEET SOUTH AND 1710 FEET EAST FROM NW CORNER OF SECTION 35 |

* **Note:** a scrivener's error was found in the POA description for Williams Well #4. See finding #10 below for correction.

Authorized Places of Use:

| PRIMARY IRRIGATION (IR) | | | | | |
|-------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q - Q | Acres |
| 6 N | 34 E | WM | 26 | SE SW | 11.8 |
| 6 N | 34 E | WM | 26 | SW SE | 27.5 |
| 6 N | 34 E | WM | 35 | NW NE | 3.5 |
| TOTAL: | | | | | 42.8 |

* **Note:** a portion of the above described 42.8 acres is requested to be diminished to supplemental irrigation to existing Hudson Bay District Improvement Company primary rights. See Finding #23 below.

| SUPPLEMENTAL IRRIGATION FROM BASALT AQUIFER TO MAKE UP A DEFICIENCY IN RATE | | | | | |
|--|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q - Q | Acres |
| 6 N | 34 E | WM | 26 | SE SW | 25.2 |
| 6 N | 34 E | WM | 26 | SW SE | 12.5 |
| 6 N | 34 E | WM | 35 | NW NE | 37.1 |
| 6 N | 34 E | WM | 35 | NE NW | 40.6 |
| TOTAL: | | | | | 115.4 |

13. Transfer Application T-13369 proposes to change the point of appropriation for the above described acres East approximately 110 feet to:

| Twp | Rng | Mer | Sec | Q - Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 6 N | 34 E | WM | 35 | NE NW | VANDREE WELL 1 - 1290 FEET SOUTH AND 1760 FEET EAST FROM NW CORNER OF SECTION 35 |

14. Certificate 89896 contains a scrivener's error in its quarter-quarter description for the point of appropriation (POA) for Williams Well #4 described above in Finding #10. The certificate incorrectly lists the quarter-quarter as the SE¼ NW¼ within Section 35. Based on the Claim of Beneficial Use map for Certificate 89896 and the applicant's Certified Water Rights Examiner's current map (Cook/2020) based on a recent field visit, the Department is led to conclude that Certificate 89896 should be corrected to reflect the correct quarter-quarter description within the NE¼ NW¼, Section 35.
15. The portion of the second right to be transferred is as follows:

Certificate: 30638 in the name of L.M. MARLATT (perfected under Permit G-464)

Use: IRRIGATION of 108.02 ACRES

Rate: 1.24 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, shall be 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: A WELL (aka -WILLIAMS WELL #4) within the PINE CREEK BASIN

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q - Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 6 N | 34 E | WM | 35 | NE NW | 20½ CHAINS SOUTH AND 25 CHAINS EAST FROM THE NW CORNER OF SECTION 35 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|--------|
| Twp | Rng | Mer | Sec | Q - Q | Acres |
| 6 N | 34 E | WM | 26 | SE SW | 17.82 |
| 6 N | 34 E | WM | 26 | SW SE | 12.50 |
| 6 N | 34 E | WM | 35 | NW NE | 37.10 |
| 6 N | 34 E | WM | 35 | NE NW | 40.60 |
| TOTAL: | | | | | 108.02 |

* **Note:** a portion of the above described 108.02 acres is requested to be diminished to supplemental irrigation to existing Hudson Bay District Improvement Company primary rights. See Finding #25 below.

16. Transfer Application T-13369 proposes to change the point of appropriation east approximately 110 feet to:

| Twp | Rng | Mer | Sec | Q - Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 6 N | 34 E | WM | 35 | NE NW | VANDREE WELL 1 - 1290 FEET SOUTH AND 1760 FEET EAST FROM NW CORNER OF SECTION 35 |

17. The Department has determined that four primary water rights exist on the lands identified in this transfer, causing them to be “layered rights” under Oregon Administrative rule OAR 690-380-2240. However, the Department shall consider the right with the oldest priority date as the primary water right unless the landowner/applicant designates otherwise (OAR 690-380-5120). All other rights shall be diminished to supplemental water rights. The applicant has submitted voluntary diminution affidavits for portions of Certificates 89896 and 30638 which remedies the conflicts and are further described below in Findings #24 and #25.
18. The diminishment and proposed use of water for supplemental irrigation under Certificates 89896 and 30638 together with the existing water right Certificates 83953, 93399 and 83956 and shall be limited to an appropriation of no more than the allowable rate and duty per each acre as specified as follows:

| Certificate# | Amount of water authorized in each Certificate | Acres under Vandree lands |
|--------------|--|--|
| 30638 | 1.33 cfs for 115.6 acres - <i>(0.0115 cfs per acre per growing season)</i> | 108.02 @ 1.24 cfs |
| 89896 | PRIMARY IRRIGATION (IR) - 2.77 cfs for 238.4 ac. <i>(0.0116 cfs per acre per growing season)</i> SUPPLEMENTAL IRRIGATION (IS) for a deficiency from Basalt Aquifer – 0.338 cfs for 433.0 acres <i>(0.0008 cfs per acre per growing season)</i> | <u>Primary:</u> 42.8 acres @ 0.497 cfs <u>Suppl. Irr.:</u> 115.4 acres @ 0.09 cfs |

19. The portions of water right Certificates 89896 and 30638 proposed for transfer appropriate water by means of a common well (Williams Well #4) that is not capable of simultaneously supplying water to the rest of the original permit G-13697 (Certificate 89896) when the Department approved the proof of beneficial use under the right. Consequently, this right carries a condition that further limits what can be appropriated under the right to an aggregate total of what specifically can be appropriated from the basalt aquifer. That portion of Certificate 89896 not modified by the transfer will continue to carry the condition that together limits them to the capacity of the other original wells at the time of perfection of the permit.

Transfer Review Criteria (OAR 690-380-4010)

20. Water has been used within the last five years prior to the submittal of Transfer Application T-13369 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.
21. A well, 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-13369.
22. The proposed change as conditioned would not result in enlargement of the rights.
23. The proposed change as conditioned would not result in injury to other water rights.

24. All other application requirements are met.

Partial Diminishment of a Water Right

25. On February 12, 2021, the applicant submitted an affidavit for the partial diminishment of water right Certificate 89896. The following portion of an irrigation right is appurtenant to the same lands as the authorized place of use under existing Hudson Bay Improvement District Co. water right Certificates 83953, 83956, and 93399. The portion of the irrigation right to be diminished to supplemental irrigation is as follows:

Certificate: 89896 in the name of T. O. WILLIAMS & ASSOCIATES (C/O) RAY WILLIAMS; JOHN C. & LINDA K. VANDREE (perfected under Permit G-13697)

Use: IRRIGATION of 37.95 ACRES

Priority Date: APRIL 20, 1998

Rate: 0.441 cfs

Period of Use: March 1 through October 31

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) and 3.0 ACRE-FEET per acre for each acre irrigated during the irrigation season of each year.

Source: WILLIAMS WELL 4 within the SWARTZ SPRING CREEK and PINE CREEK BASINS

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q - Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 6 N | 34 E | WM | 35 | NE NW | WILLIAMS WELL 4 (UMAT 4177/BASALT) - 1290 FEET SOUTH AND 1710 FEET EAST FROM NW CORNER OF SECTION 35 |

Authorized Place of Use to be Diminished to Supplemental Irrigation:

| SUPPLEMENTAL IRRIGATION (IR) | | | | | |
|------------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q - Q | Acres |
| 6 N | 34 E | WM | 26 | SE SW | 9.45 |
| 6 N | 34 E | WM | 26 | SW SE | 25.00 |
| 6 N | 34 E | WM | 35 | NW NE | 3.50 |
| TOTAL: | | | | | 37.95 |

Partial Diminishment of a Water Right

26. On February 12, 2021, the applicant submitted an affidavit for the partial diminishment of water right Certificate 30638. The following portion of an irrigation right is appurtenant to the same lands as the authorized place of use under existing Hudson Bay Improvement District Co. water right Certificates 83953, 83956 and 93399. The portion of the irrigation right to be diminished to supplemental irrigation is as follows:


Certificate: 30638 in the name of the name L. M. MARLATT (perfected under Permit G-464)

Use: IRRIGATION of 102.4 ACRES

Rate: 1.18 CUBIC FEET PER SECOND

6. To ensure the new well uses the same source of water as the original well (UMAT 4177), the new well shall be completed to access the same aquifer as the existing well. The replacement well shall be open to a single aquifer in the Columbia River Basalt Group and shall meet applicable well construction standards (OAR 690-200 and OAR 690-210). Following well completion, the well shall be thoroughly developed to remove cuttings and drilling fluids. After drilling but before placement of the final casing and seal, the applicant shall consult with a Department hydrogeologist and the Well Construction Section to determine the final construction. Substantial evidence of a single aquifer completion may be collected by video log, downhole flowmeter, water chemistry and temperature, or other downhole geophysical methods approved by the Department. These methods shall characterize the nature of the basalt rock and assess whether water is moving in the borehole. Any discernable movement of water within the well bore when the well is not being pumped shall be assumed as evidence of the presence of multiple aquifers in the open interval.
7. Drill cuttings shall be collected at 10-foot intervals and at changes in formation in the well and a split of each sampled interval shall be provided to the Department.
8. 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 the new point of appropriation.
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
9. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2027**. 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.
10. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this _____ **SEP 08 2021**



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

Mailing date: _____ **SEP 09 2021**

Priority Date: DECEMBER 4, 1956

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, 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 (*aka* -WILLIAMS WELL #4) within the PINE CREEK BASIN

Authorized Place of Use to be Diminished to Supplemental Irrigation:

| SUPPLEMENTAL IRRIGATION (IR) | | | | | |
|------------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q - Q | Acres |
| 6 N | 34 E | WM | 26 | SE SW | 13.0 |
| 6 N | 34 E | WM | 26 | SW SE | 11.7 |
| 6 N | 34 E | WM | 35 | NW NE | 37.1 |
| 6 N | 34 E | WM | 35 | NE NW | 40.6 |
| TOTAL: | | | | | 102.4 |

Conclusions of Law

The change in points of appropriation proposed in Transfer Application T-13369 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the diminished portions of Certificates 89896 and 30638 are diminished.

Now, therefore it is ORDERED:

1. The change in points of appropriation proposed in Transfer Application T-13369 is approved, the portions of the rights requested to be diminished are 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 Certificates 30638 and 89896 and any related decree.
3. Water right Certificates 30638 and 89896 are cancelled. New certificates will be issued describing those portions of Certificate 89896 and 30638 not affected by this transfer and the diminishments.
4. The quantity of water diverted at the new point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.
5. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.

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