BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-13348, Clackamas County) .	ADDITIONAL POINTS OF APPROPRIATION

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

T AND K SESTER FAMILY LLC 24200 SE HWY 212 DAMASCUS, OR 97089

Findings of Fact

- 1. On January 15, 2020, T AND K LLC, ATTN: TED SESTER, filed an application for additional points of appropriation under Certificate 94408. The Department assigned the application number T-13348.
- 2. Notice of the application for transfer was published on January 28, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. On April 8, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13348 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 8, 2022, 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.
- 4. On April 27, 2022, the agent for the applicant notified the Department that the applicant requested to change the name on Transfer Application T-13348 from T AND K LLC, ATTN: TED SESTER to T AND K SESTER FAMILY LLC.

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 June 1, 2022, the Department issued a Preliminary Determination proposing to approve Transfer T-13348 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 7, 2022, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
- 6. On June 24, 2022, the Department received an amended application page signed by the applicant, allowing the name on Transfer Application T-13348 to be updated to T AND K SESTER FAMILY LLC.

7. The right to be transferred is as follows:

Certificate:

94408 in the name of T AND K LLC (perfected under Permit G-1645)

Use:

IRRIGATION of 47.0 ACRES

Priority Date: JULY 20, 1960

Rate:

0.37 CUBIC FOOT PER SECOND (CFS), FURTHER LIMITED TO 0.33 CFS FROM

WELL 1 AND 0.27 CFS FROM WELL 2, NOT TO EXCEED 0.37 CFS IN ANY

COMBINATION FROM THE TWO WELLS

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 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of

each year.

Source:

TWO WELLS, a tributary of DEEP CREEK (CLACKAMAS RIVER)

Authorized Points of Appropriation:

	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
ľ	25	3 F	3 F WM		NF NF	WELL 1 - 400 FEET SOUTH AND 613 FEET
	45	3 E	VVIVI	1 10 NE NE	WEST FROM THE NE CORNER OF SECTION 10	
Γ		3 F	WM	10	NE NE	WELL 2 - 448 FEET SOUTH AND 87 FEET WEST
2.5	23	3 5	VVIVI	10	INC INC	FROM THE NE CORNER OF SECTION 10

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer [*]	Sec	Q-Q	Acres		
2 \$	3 E	WM	10	NE NE	10.9		
2 S	3 E	WM	10	SE NE	36.1		
			, .	Total	47.0		

8. Transfer Application T-13348 proposes additional points of appropriation with approximate distance from the existing points of appropriation as follows:

Tw	р	Rng	Mer	Sec	Q-Q	Measured Distances	Distances from Existing Points of Appropriation
2	S	3 E	WM	10	NE NE	WELL 3 - 450 FEET SOUTH AND 45 FEET WEST FROM THE NE CORNER OF SECTION 10	WELL 1 – 566 FEET WELL 2 – 56 FEET

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distances from Existing Points of Appropriation
2 S	3 E	WM	10	NE NE	WELL 4 - 505 FEET SOUTH AND 635 FEET WEST FROM THE NE CORNER OF SECTION 10	WELL 1 – 107 FEET WELL 2 – 553 FEET
2 S	3 E	wm	10	NE NE	WELL 5 - 1500 FEET SOUTH AND 200 FEET WEST FROM THE NE CORNER OF SECTION 10	WELL 1 – 1173 FEET WELL 2 – 1057 FEET

9. The Department's Groundwater Section requires the following condition in order to ensure that the additional point of appropriation (Well 5) proposed under Transfer Application T-13348 develops the same source:

The proposed construction of APOA Well 5, yet to be drilled, would leave the open interval much larger than the existing wells here, extending from 70-250' below land surface. In order to produce from the upper portions of the Springwater, proposed APOA well 5 shall be constructed to have an open interval extending no deeper than 200' below land surface.

Transfer Review Criteria (OAR 690-380-4010)

- 10. 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.
- 11. A pump, pipeline, 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-13348.
- 12. The proposed change as conditioned would not result in enlargement of the right.
- 13. The proposed change would not result in injury to other water right.
- 14. All other application requirements are met.

Determination and Proposed Action

The additional points of appropriation proposed in Transfer Application T-13348 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

- 1. The additional points of appropriation proposed in Transfer Application T-13348 are 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 94408 and any related decree.
- 3. Water right Certificate 94408 is cancelled.

- 4. The quantity of water diverted at the proposed additional points of appropriation (WELL 3, WELL 4, and WELL 5), together with that diverted at the original points of appropriation (WELL 1 and WELL 2), shall not exceed the quantity of water lawfully available at the original points of appropriation (WELL 1 and WELL 2).
- 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 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 points of appropriation.
- 7. Prior to water use from proposed APOA Well 5, the well shall be constructed to have an open interval extending no deeper than 200' below land surface.
- 8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before October 1, 2023. 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

AUG 1 8 2022

Lisa J. Jaramillo Transfer and Conservation Section Manager, for

THOMAS M BYLER, DIRECTOR

Oregon Water Resources Department

Mailing date: AUG 1 9 2022