

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

In the Matter of Transfer Application                    )     FINAL ORDER APPROVING AN  
T-12703, Jackson County                                 )     ADDITIONAL 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**

MICHAEL LISK  
488 NORTH MAIN ST  
ASHLAND, OR 97520  
houseofleaves488@gmail.com

**Findings of Fact**

1. On June 23, 2017, MICHAEL LISK filed an application for an additional point of diversion under Certificate 45393. The Department assigned the application number T-12703.
2. Notice of the application for transfer was published on June 27, 2017, pursuant to OAR 690-380-4000.
3. On July 19, 2017, one timely comment was received by the Department in response to the notice. Linda M. and Butch Gilbert, 1408 Pine Grove Road, Rogue River OR 97537, the comment is as follows: “I am the owner of tax lot 202 at 1408 Pine Grove Road, Rogue River, Oregon. I have not given Michael Lisk permission to put a new diversion point on my property. He has submitted the application T-12703 on June 21<sup>st</sup> 2017. Again he does not have my permission to go forward with this application. Thank You, Linda Gilbert.”
4. On October 16, 2017, the agent for the applicant submitted an amended application and map changing the location of the proposed additional point of diversion to within an existing easement in tax lot 202, Section 21, T35S, R4W, WM.

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 16, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12703 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 16, 2017, for the applicant to respond. The applicant requested the completion date be extended to October 1, 2023 and for 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.
6. On November 17, 2017, the Department issued a Preliminary Determination proposing to approve Transfer T-12703 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 November 28, 2017, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
7. The portion of the right to be transferred is as follows:

**Certificate:** 45393 in the name of MELVIN MEAD (perfected under Permit S-32042)  
**Use:** IRRIGATION OF 9.81 ACRES  
**Priority Date:** OCTOBER 19, 1966  
**Rate:** 0.13 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** EVANS CREEK, tributary to the ROGUE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	4 W	WM	21	NE NE	760 FEET SOUTH AND 270 FEET WEST FROM THE NE CORNER OF SECTION 21

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	4 W	WM	21	NE NE	9.10
35 S	4 W	WM	21	SE NE	0.71
Total					9.81

8. Transfer Application T-12703 proposes an additional point of diversion approximately 580 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	4 W	WM	21	NE NE	1307 FEET SOUTH AND 400 FEET WEST FROM THE NE CORNER OF SECTION 21

9. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that

the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

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-12703.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

**Conclusions of Law**

The additional point of diversion proposed in Transfer Application T-12703 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The additional point of diversion proposed in Transfer Application T-12703 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 45393 and any related decree.
3. Water right Certificate 45393 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. The quantity of water diverted at the additional point of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
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 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.

6. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

7. 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.
8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this day FEB 14 2018.



Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

Mailing date: FEB 15 2018