# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application	)	FINAL ORDER
T-13526, Umatilla County	)	APPROVING A CHANGE IN 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**

RON AND LOANN MACDOUGALL 52708 SUNQUIST ROAD MILTON FREEWATER, OR 97862

## **Findings of Fact**

- 1. On September 29, 2020, RON AND LOANN MACDOUGALL filed an application to change the point of diversion under Certificate 23. The Department assigned the application number T-13526.
- 2. Notice of the application for transfer was published on September 29, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. On April 4, 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 4, 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 June 6, 2022, the Department issued a Preliminary Determination proposing to approve Transfer T-13526 and mailed a copy by certified mail 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.

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. The right to be transferred is as follows:

Certificate: 23 in the name of NICK GROSGEBAUER (confirmed by East Mud Creek

Decree)

**Use:** IRRIGATION of 20.0 ACRES

**Priority Date: 1881** 

Rate: 0.38 CUBIC FOOT PER SECOND

Period of Use: April 1 to September 20

Source: EAST BRANCH OF MUD CREEK, tributary of the WALLA WALLA RIVER

## **Authorized Point of Diversion:**

POD Location				
EAST BRANCH OF MUD CREEK				

### **Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	22	SW NW	20.00

6. Transfer Application T-13526 proposes to move the authorized point of diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
6 N	35 E	WM	22 /	SW NW	700	POD #1 - 344 FEET NORTH AND 549 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 22

7. The Oregon Department of Fish and Wildlife has determined that the diversion is not currently equipped with an appropriate fish screen, but a fish screen may be required in the future at the new point of diversion to prevent fish from entering the diversion.

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

- 8. Water has been used within the last five years. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610
- 9. 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-13526.
- 10. The proposed change would not result in enlargement of the right.
- 11. The proposed change would not result in injury to other water rights.
- 12. All other application requirements are met.

#### **Determination and Proposed Action**

The change in point of diversion proposed in Transfer Application T-13526 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 in point of diversion proposed in Transfer Application T-13526 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 23 and any related decree.
- 3. Water right Certificate 23 is cancelled.
- 4. The quantity of water diverted at the new point of diversion (POD #1), 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 new point of diversion.
  - 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. The Oregon Department of Fish and Wildlife (ODFW) may require the water user to install an approved fish screen at the new point of diversion within one year after receiving written notification that a fish screen is required. Once installed the water user shall maintain and operate the fish screen at the new point of diversion according to 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.

SEP 2 2 2022

Dated in Salem, Oregon on

Lisa J. Jaramillo, Transfer and Conservation Section Manager, for

DOUGLAS E. WOODCOCK, ACTING DIRECTOR

Oregon Water Resources Department

Mailing date: SEP 2 3 2022