

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

| | | |
|---------------------------------------|---|--------------------------------|
| In the Matter of Transfer Application |) | FINAL ORDER APPROVING AN |
| T-13496, Klamath County |) | ADDITIONAL POINT OF |
| |) | APPROPRIATION, A CHANGE IN |
| |) | POINTS OF APPROPRIATION, AND A |
| |) | CHANGE IN PLACE OF USE AND |
| |) | THE PARTIAL DIMINUTION OF A |
| |) | WATER RIGHT |

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

DEBORAH ANN WALLACE
9480 BUESING RD.
KLAMATH FALLS, OR 97603

Receiving Landowner

AGUILA G-BOYS LK 300 LLC
18969 W. McDOWELL RD.
BUCKEYE, AZ 85396

Findings of Fact

1. On July 23, 2020, DEBORAH ANN WALLACE filed an application for an additional point of appropriation, a change in points of appropriation, and to change the place of use under Certificate 91588. The Department assigned the application number T-13496.
2. On July 23, 2020, the applicant’s agent sent an Affidavit for the Voluntary Partial Diminution of a Water Right Permit to the Department for Certificate 91588 for 125.0 acres.
3. Notice of the application for transfer was published on August 4, 2020, pursuant to OAR 690-380-4000. No comments 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.

4. On November 20, 2020, the Department contacted the agent requesting a new Affidavit of Partial Diminution (Affidavit) listing the "FROM" lands.
5. On November 30, 2020, the applicant's agent emailed a map of the "FROM" lands being diminished.
6. On December 2, 2020, the Department replied to the agent and requested a new Affidavit listing the "FROM" lands and signed by the owner of the "FROM" lands.
7. On February 24, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13496 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 26, 2021, for the applicants to respond. The applicants 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.
8. On April 14, 2021, the Department issued a Preliminary Determination proposing to approve Transfer T-13496 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 April 20, 2021, and in the Klamath Falls Herald and News newspaper on April 21 and 28, 2021 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: 91588 in the name of RANDOLPH WALLACE AND DEBORAH WALLACE (perfected under Permit G-12979)
Use: IRRIGATION of 311.5 ACRES
Priority Date: OCTOBER 22, 1993
Rate: 2.48 CUBIC FEET PER SECOND
Limit/Duty: The amount of water used for irrigation under this right, 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.
Period of Use: MARCH 1 THROUGH SEPTEMBER 30
Source: A WELL in the LOST RIVER BASIN

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|--|
| 41 S | 10 E | WM | 5 | NE NW | WELL #1 - 784 FEET NORTH AND 30 FEET WEST FROM THE CENTER N 1/16 CORNER OF SECTION 5 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 40 S | 10 E | WM | 32 | SE SW | 36.3 |

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 41 S | 10 E | WM | 5 | NE NW | 36.5 |
| 41 S | 10 E | WM | 5 | SE NW | 9.9 |
| 41 S | 10 E | WM | 5 | NE SW | 40.0 |
| 41 S | 10 E | WM | 5 | SE SW | 40.0 |
| 41 S | 10 E | WM | 5 | NW SE | 28.8 |
| 41 S | 10 E | WM | 5 | SW SE | 40.0 |
| 41 S | 10 E | WM | 8 | NW NE | 40.0 |
| 41 S | 10 E | WM | 8 | SW NE | 40.0 |
| TOTAL | | | | | 311.5 |

10. Transfer Application T-13496 proposes an additional point of appropriation as follows:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|--|
| 41 S | 10 E | WM | 5 | NW SE | WELL #2 – 2694.6 FEET SOUTH AND 460 FEET EAST FROM THE NORTH ¼ CORNER OF SECTION 5 |

11. Transfer Application T-13496 proposes the additional point of appropriation (Well #2) be used in addition to the authorized point of appropriation (Well #1) at the following places of use:

| IRRIGATION | | | | | | Wells |
|------------|------|-----|-----|-------|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | |
| 41 S | 10 E | WM | 5 | NE SW | 1.53 | 1 & 2 |
| 41 S | 10 E | WM | 5 | SE SW | 40.0 | |
| 41 S | 10 E | WM | 5 | NW SE | 1.97 | |
| 41 S | 10 E | WM | 5 | SW SE | 40.0 | |
| 41 S | 10 E | WM | 8 | NW NE | 29.11 | |
| 41 S | 10 E | WM | 8 | SW NE | 28.99 | |
| TOTAL | | | | | 141.6 | |

12. Transfer Application T-13496 proposes to change points of appropriation as follows:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|---|
| 41 S | 10 E | WM | 9 | NW NW | WELL #4 – 1270 FEET SOUTH AND 1000 FEET EAST FROM THE NW CORNER OF SECTION 9 |
| 41 S | 10 E | WM | 9 | SW NW | WELL #3 - NORTH ZERO DEGREES AND 42 MINUTES EAST, 1287.9 FEET FROM THE WEST ¼ CORNER OF SECTION 9 |
| 41 S | 10 E | WM | 9 | NE SW | WELL #5 – NORTH 22 DEGREES AND 48 MINUTES WEST, 2606.2 FEET FROM THE SOUTH ¼ CORNER OF SECTION 9 |
| 41 S | 10 E | WM | 9 | NW SE | WELL #6 – 2586.6 FEET NORTH AND 1284.5 FEET EAST FROM THE SOUTH ¼ CORNER OF SECTION 9 |

| Approximate distance from original point of appropriation in miles (mi.) | | | | | |
|--|---------|---------|---------|---------|---------|
| WELL | #2 | #3 | #4 | #5 | #6 |
| #1 | 0.4 mi. | 1.3 mi. | 1.3 mi. | 1.7 mi. | 1.9 mi. |

13. Transfer Application T-13496 also proposes to change the place of use of the right to:

| IRRIGATION | | | | | | |
|------------|------|-----|-----|-------|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Wells |
| 41 S | 10 E | WM | 5 | NE SE | 19.07 | 1 & 2 |
| 41 S | 10 E | WM | 5 | SE SE | 25.83 | |
| TOTAL | | | | | 44.9 | |

| SUPPLEMENTAL IRRIGATION | | | | | | |
|-------------------------|------|-----|-----|-------|-------|--------------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Wells |
| 41 S | 10 E | WM | 9 | NE SW | 5.7 | 3, 4, 5, & 6 |
| 41 S | 10 E | WM | 9 | NW SW | 10.9 | |
| 41 S | 10 E | WM | 9 | SW SW | 31.9 | |
| 41 S | 10 E | WM | 9 | SE SW | 39.5 | |
| 41 S | 10 E | WM | 9 | SW SE | 37.0 | |
| TOTAL | | | | | 125.0 | |

Partial Diminution of a Water Right

14. The proposed place of use that is described in Finding of Fact #12 has a pre-existing water right for primary irrigation under Claim KA-1000. On July 14, 2020, Arnott Duncan and Kathleen A. Duncan, Managers of Aguila G-Boys LK 300 LLC, requested to diminish the lands for the new place of use under Certificate 91588 to Supplemental Irrigation. The portion of the right to be diminished as follows:

- Certificate:** 91588 in the name of RANDOLPH WALLACE (perfected under Permit G-12979)
- Use:** IRRIGATION of 125.0 ACRES
- Priority Date:** OCTOBER 22, 1993
- Rate:** 1.00 CUBIC FOOT PER SECOND
- Limit/Duty:** The amount of water used for irrigation under this right, 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.
- Period of Use:** MARCH 1 THROUGH SEPTEMBER 30
- Source:** A WELL in the LOST RIVER BASIN

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|--|
| 41 S | 10 E | WM | 5 | NE NW | WELL #1 – 784 FEET NORTH AND 30 FEET WEST FROM THE CENTER NORTH 1/16 TH CORNER OF SECTION 5 |

Authorized Place of Use:

| SUPPLEMENTAL IRRIGATION | | | | | |
|-------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 40 S | 10 E | WM | 32 | SE SW | 36.30 |

| SUPPLEMENTAL IRRIGATION | | | | | |
|-------------------------|------|-----|-----|-------|--------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 41 S | 10 E | WM | 5 | NE NW | 36.50 |
| 41 S | 10 E | WM | 5 | SE NW | 9.90 |
| 41 S | 10 E | WM | 5 | NE SW | 38.47 |
| 41 S | 10 E | WM | 5 | NW SE | 3.83 |
| TOTAL | | | | | 125.00 |

Transfer Review Criteria (OAR 690-380-4010)

15. 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.
16. 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-13496.
17. The proposed changes would not result in enlargement of the right.
18. The proposed changes would not result in injury to other water rights.
19. All other application requirements are met.

Conclusions of Law

The additional points of appropriation, change in point of appropriation, and change in places of use proposed in Transfer Application T-13496 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

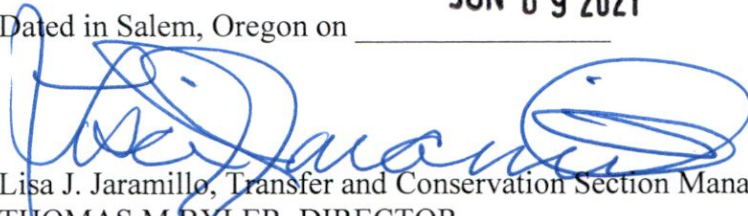
Now, therefore, it is ORDERED:

1. The additional point of appropriation, change in points of appropriation, and change in places of use proposed in Transfer Application T-13496 are approved. The portion of the right proposed to be diminished is 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 Certificate 91588 and any related decree.
3. Water right Certificate 91588 is cancelled.
4. The quantity of water diverted at the additional point of appropriation, (Well #2), together with that diverted at the original point of appropriation (Well #1), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well #1).

5. The quantity of water diverted at the new points of appropriation, (Well #3, Well #4, Well #5, and Well #6), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well #1).
6. 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, (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.
7. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
8. The former place of use of the transferred right shall no longer receive water under the right.
9. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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, a new certificate confirming the rights transferred will be issued.

JUN 09 2021

Dated in Salem, Oregon on _____



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

Mailing date: **JUN 10 2021**