

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-12957, Klamath County)	ADDITIONAL POINTS OF
)	APPROPRIATION, A CHANGE IN
)	PLACE OF USE, AND CHARACTER
)	OF USE

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

BLY WATER AND SANITARY DISTRICT
PO BOX 72
BLY, OR 97622

Findings of Fact

1. On June 21, 2018, BLY WATER AND SANITARY DISTRICT filed an application for additional points of appropriation and to change the place of use and character of use under Certificates 82569 and 82851. The Department assigned the application number T-12957.
2. Notice of the application for transfer was published on July 3, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 18, 2018, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of the deficiencies in the application. The Department requested that the deficiencies be resolved by October 17, 2018.
4. On September 26, 2018, the applicant submitted additional fees in order to continue processing the application.

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 2, 2018, the applicant's agent submitted a revised Table 1 and map, correcting the deficiencies.
6. On October 25, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12957 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 26, 2018, 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.
7. On January 28, 2019, the Department issued a Preliminary Determination proposing to approve Transfer T-12957 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 January 29, 2019, and in the Klamath Falls Herald and News newspaper on February 3, and 10, 2019 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
8. The first right to be transferred is as follows:

Certificate: 82569 in the name of BLY WATER DISTRICT, AN OREGON
MUNICIPAL CORPORATION (perfected under Permit G-9033)
Use: MUNICIPAL USE
Priority Date: JULY 18, 1980
Rate: 1.55 CUBIC FEET PER SECOND
Source: A WELL in the KLAMATH BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	14 E	WM	34	SW SW	110 FEET NORTH AND 2014.5 FEET WEST FROM THE S1/4 CORNER OF SECTION 34

Authorized Place of Use:

MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
36 S	14 E	WM	34	SW NE
36 S	14 E	WM	34	NE NW
36 S	14 E	WM	34	SE NW
36 S	14 E	WM	34	NE SW
36 S	14 E	WM	34	SE SW
36 S	14 E	WM	34	NE SE
36 S	14 E	WM	34	NW SE
36 S	14 E	WM	34	SW SE
36 S	14 E	WM	34	SE SE
36 S	14 E	WM	35	SW SW
37 S	14 E	WM	2	NW NW
37 S	14 E	WM	2	SW NW
37 S	14 E	WM	3	NE NE
37 S	14 E	WM	3	NW NE
37 S	14 E	WM	3	SW NE
37 S	14 E	WM	3	SE NE

MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
37 S	14 E	WM	3	NE NW
37 S	14 E	WM	3	SE NW

9. Transfer Application T-12957 proposes additional points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from the authorized point of appropriation in miles (mi)
36 S	14 E	WM	33	SE SE	POA 3 - 110 FEET NORTH AND 75 FEET WEST FROM THE SE1/4 CORNER OF SECTION 33	0.1 mi
37 S	14 E	WM	3	SE SW	POA 1 - 151.06 FEET NORTH AND 1112.83 FEET WEST FROM THE S1/4 CORNER OF SECTION 3	1.0 mi

10. Transfer Application T-12957 also proposes to change the place of use of the right to:

MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
36 S	14 E	WM	34	SW NE
36 S	14 E	WM	34	NE NW
36 S	14 E	WM	34	SE NW
36 S	14 E	WM	34	NE SW
36 S	14 E	WM	34	SE SW
36 S	14 E	WM	34	NE SE
36 S	14 E	WM	34	NW SE
36 S	14 E	WM	34	SW SE
36 S	14 E	WM	34	SE SE
36 S	14 E	WM	35	SW SW
37 S	14 E	WM	2	NW NW
37 S	14 E	WM	2	SW NW
37 S	14 E	WM	3	NE NE
37 S	14 E	WM	3	NW NE
37 S	14 E	WM	3	SW NE
37 S	14 E	WM	3	SE NE
37 S	14 E	WM	3	NE NW
37 S	14 E	WM	3	SE NW
37 S	14 E	WM	3	NE SW
37 S	14 E	WM	3	SE SW
37 S	14 E	WM	3	NE SE
37 S	14 E	WM	3	NW SE
37 S	14 E	WM	3	SW SE

11. The second right to be transferred is as follows:

Certificate: 82851 in the name of BLY WATER DISTRICT (perfected under Permit G-6353)

Use: DOMESTIC WATER SUPPLY FOR THE COMMUNITY OF BLEY-WAS HEIGHTS, INCLUDING COMMERCIAL PURPOSES

Priority Date: NOVEMBER 12, 1974

Rate: 1.38 CUBIC FEET PER SECOND

Source: A WELL in the SPRAGUE RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	14 E	WM	3	SE SW	151.06 FEET NORTH AND 1112.83 FEET WEST FROM THE S1/4 CORNER OF SECTION 3

Authorized Place of Use:

DOMESTIC WATER SUPPLY FOR THE COMMUNITY OF BLEY-WAS HEIGHTS, INCLUDING COMMERCIAL PURPOSES				
Twp	Rng	Mer	Sec	Q-Q
37 S	14 E	WM	3	NE SW
37 S	14 E	WM	3	SE SW
37 S	14 E	WM	3	NE SE
37 S	14 E	WM	3	NW SE
37 S	14 E	WM	3	SW SE

12. On September 18, 2018, the Department identified a scrivener's error in the described location of the point of appropriation (POA) under Certificate 82851.
13. The Department identified information in the original application that better describes the authorized POA as:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
37 S	14 E	WM	3	SE SW	NORTH 82 DEGREES 16 MINUTES 12 SECONDS WEST AND 1123.04 FEET FROM THE S1/4 CORNER OF SECTION 3

14. Transfer Application T-12957 proposes additional points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from the authorized point of appropriation in miles (mi)
36 S	14 E	WM	34	SW SW	POA 2 - 110 FEET NORTH AND 2014.5 FEET WEST FROM THE S1/4 CORNER OF SECTION 34	1.0 mi
36 S	14 E	WM	33	SE SE	POA 3 - 110 FEET NORTH AND 75 FEET WEST FROM THE SE1/4 CORNER OF SECTION 33	1.1 mi

15. Transfer Application T-12957 proposes to change the character of use to Municipal use.
16. Transfer Application T-12957 also proposes to change the place of use of the right to:

MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
36 S	14 E	WM	34	SW NE
36 S	14 E	WM	34	NE NW
36 S	14 E	WM	34	SE NW

MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
36 S	14 E	WM	34	NE SW
36 S	14 E	WM	34	SE SW
36 S	14 E	WM	34	NE SE
36 S	14 E	WM	34	NW SE
36 S	14 E	WM	34	SW SE
36 S	14 E	WM	34	SE SE
36 S	14 E	WM	35	SW SW
37 S	14 E	WM	2	NW NW
37 S	14 E	WM	2	SW NW
37 S	14 E	WM	3	NE NE
37 S	14 E	WM	3	NW NE
37 S	14 E	WM	3	SW NE
37 S	14 E	WM	3	SE NE
37 S	14 E	WM	3	NE NW
37 S	14 E	WM	3	SE NW
37 S	14 E	WM	3	NE SW
37 S	14 E	WM	3	SE SW
37 S	14 E	WM	3	NE SE
37 S	14 E	WM	3	NW SE
37 S	14 E	WM	3	SW SE

17. Certificate 82851 does not specify a total quantity of water to be diverted annually for domestic water supply including commercial purposes; however, the limit of the water right is the maximum quantity that could be beneficially used without waste. Therefore, to prevent enlargement of this right, the maximum diverted annual volume of water for municipal use under this right should be limited to 997.3 AF (1.38 cfs x 1.98 AF/day x 365 days).

Transfer Review Criteria (OAR 690-380-4010)

18. Water has been used within the last five years 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.
19. A pump, storage tank, booster pumps and a water delivery 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-12957.
20. The proposed changes, as conditioned, would not result in enlargement of the rights.
21. The proposed changes, as conditioned, would not result in injury to other water rights.
22. All other application requirements are met.

Conclusions of Law

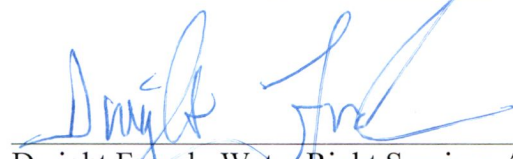
The additional points of appropriation, change in place of use, and change in character of use proposed in Transfer Application T-12957 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

Now, therefore, it is ORDERED:

1. The additional points of appropriation, change in place of use, and change in character of use proposed in Transfer Application T-12957 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 Certificates 82569 and 82851, and any related decree.
3. Water Right Certificates 82569 and 82851 are cancelled.
4. The quantity of water diverted at the additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.
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. The use of water for Certificate 82851 under the proposed municipal use shall be limited to a total quantity of water diverted of 997.3 acre-feet per year.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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.

9. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this MAR 22 2019,



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

Mailing date: MAR 25 2019