

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING ADDITIONAL
T-14049, Marion County)	POINTS OF APPROPRIATION, A CHANGE
)	IN PLACE OF USE, AND PARTIAL
)	CANCELLATION 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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

BRUCE ERNST
PO BOX 460
SAINT PAUL, OR 97137

Findings of Fact

1. On July 15, 2022, BRUCE ERNST filed an application for additional points of appropriation, to change the place of use, and to cancel a portion of the place of use under Certificate 34191. The Department assigned the application number T-14049.
2. Notice of the application for transfer was published on August 2, 2022, 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.

3. On March 8, 2023, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-14049 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 7, 2023, 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 May 30, 2023, the Department issued a Preliminary Determination proposing to approve Transfer T-14049 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 6, 2023, and in the Woodburn Independent newspaper on June 7 and 14, 2023 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
5. The portion of the right to be transferred is as follows:

Certificate: 34191 in the name of MICHAEL E. HOPFER (perfected under Permit G-2649)
Use: IRRIGATION of 68.3 ACRES
Priority Date: APRIL 30, 1964
Rate: 0.42 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL a tributary of WILLAMETTE RIVER (COLUMBIA RIVER)

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	4	SW SE	70	WELL 1 - 610 FEET SOUTH AND 960 FEET EAST FROM THE NW CORNER OF DLC 70

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	2 W	WM	4	NE SW	70	4.2
4 S	2 W	WM	4	SE SW	70	15.4
4 S	2 W	WM	4	NE SE	70	2.1
4 S	2 W	WM	4	NW SE	70	8.6
4 S	2 W	WM	4	SW SE	70	29.8
4 S	2 W	WM	4	SE SE	70	5.1
4 S	2 W	WM	9	NE NE	70	0.2
4 S	2 W	WM	9	NW NE	70	2.9
Total						68.3

6. Certificate 34191 describes the point of appropriation; however, the applicant provided a more accurate description of the point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	4	SW SE	70	WELL 1 - 720 FEET SOUTH AND 1000 FEET EAST FROM THE NW CORNER OF DLC 70

7. Transfer Application T-14049 proposes additional points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approximate distance from original point of appropriation in feet (ft.)
4 S	2 W	WM	4	SW SE	70	WELL 2 - 635 FEET SOUTH AND 1000 FEET EAST FROM THE NW CORNER OF DLC 70	50 ft.
4 S	2 W	WM	4	SW SE	70	WELL 3 - 1200 FEET SOUTH AND 1905 FEET EAST FROM THE NW CORNER OF DLC 70	1100 ft.
4 S	2 W	WM	9	NE NE	70	WELL 4 - 2330 FEET SOUTH AND 1090 FEET WEST FROM THE NE CORNER OF DLC 70	2900 ft.

8. Transfer Application T-14049 also proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	Proposed POA
4 S	2 W	WM	4	NE SW	70	3.6	Wells 2, 3, and 4
4 S	2 W	WM	4	SE SW	70	10.9	Wells 2, 3, and 4
4 S	2 W	WM	4	SE SW	70	4.6	Re-described Well 1
4 S	2 W	WM	4	NE SE	70	2.0	Wells 2, 3, and 4
4 S	2 W	WM	4	NW SE	70	7.4	Wells 2, 3, and 4
4 S	2 W	WM	4	SW SE	70	28.4	Wells 2, 3, and 4
4 S	2 W	WM	4	SW SE	70	3.0	Re-described Well 1
4 S	2 W	WM	4	SE SE	70	5.4	Wells 2, 3, and 4
4 S	2 W	WM	9	NW NE	70	1.8	Wells 2, 3, and 4
4 S	2 W	WM	9	NE NW	70	1.2	Wells 2, 3, and 4
Total						68.3	

Transfer Review Criteria (OAR 690-380-4010)

9. 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.
10. 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-14049.
11. The proposed changes would not result in enlargement of the right.

12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

Partial Cancellation of a Water Right

14. On July 15, 2022, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Bruce Ernst. The right to be cancelled is as follows:

Certificate: 34191 in the name of MICHAEL E. HOPFER (perfected under Permit G-2649)
Use: IRRIGATION of 3.2 ACRES
Priority Date: APRIL 30, 1964
Rate: 0.02 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL a tributary of WILLAMETTE RIVER (COLUMBIA RIVER)

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	4	SW SE	70	610 FEET SOUTH AND 960 FEET EAST FROM THE NW CORNER OF DLC 70

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	2 W	WM	4	SW SE	70	2.3
4 S	2 W	WM	4	SE SE	70	0.9
					Total	3.2

Conclusions of Law

The additional points of appropriation and change in place of use proposed in Transfer Application T-14049 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right will be cancelled.

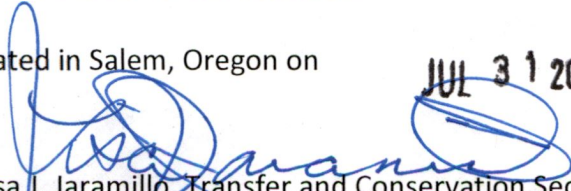
Now, therefore, it is ORDERED:

1. The additional points of appropriation and change in place of use proposed in Transfer Application T-14049 are approved. The portion of the right that has been abandoned is cancelled.

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 34191 and any related decree.
3. Water right Certificate 34191 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.
4. The quantity of water diverted at the additional points of appropriation (Wells 2, 3, & 4), 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. 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.
6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
7. The former place of use of the transferred right shall no longer receive water under the right.
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, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on

JUL 31 2023


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR
Oregon Water Resources Department

AUG 01 2023

Mailing date: _____

