

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING OF A CHANGE
T-13704, Marion County)	FROM SURFACE WATER POINTS OF
)	DIVERSION TO A GROUNDWATER POINT
)	OF APPROPRIATION

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

THOMAS AND BRENDA FERY
PO BOX 361
STAYTON, OR 97383

Findings of Fact

1. On May 10, 2021, THOMAS AND BRENDA FERY filed an application to change from surface water points of diversion to a groundwater point of appropriation for a portion of Certificate 45075. The Department assigned the application number T-13704.
2. Notice of the application for transfer was published on May 25, 2021, 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 September 6, 2023, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13704 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of October 6, 2023, 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.
4. On September 8, 2023, the applicants requested to extend the date of full beneficial use of the water to October 1, 2026, due to the length in time to secure a well driller.
5. On December 20, 2023, the Department issued a Preliminary Determination proposing to approve Transfer T-13704 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on December 26, 2023, and in the Scio Tribune newspaper on December 19 and 26, 2023, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
6. The portion of the right to be transferred is as follows:

Certificate: 45075 in the name of STAYTON CANNING COMPANY, COOPERATIVE (perfected under Permit S-38205)

Use: IRRIGATION AND SUPPLEMENTAL IRRIGATION OF 75.0 ACRES

Priority Date: JANUARY 31, 1975

Rate: 0.94 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 a diversion of ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated from direct flow 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 from direct flow and storage from unnamed reservoir constructed under Permit No. R-6170, and Detroit Reservoir constructed under Permit No. R-1625, and is subject to the terms and conditions of contracts No. 14-06-100-8541 and No. 14-06-100-8531 between the Bureau of Reclamation and the applicant, copies of which are in the records of the Water Resources Department.

Source: RESERVOIR constructed under Application No. R-52828, Permit No. R-6170, and DETROIT RESERVOIR constructed under Permit No. R-1625, a tributary of SANTIAM RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
9 S	1 W	WM	16	NW SE	2	UNNAMED RESERVOIR - 120 FEET SOUTH AND 420 FEET EAST FROM THE C1/4 CORNER OF SECTION 16
10 S	5 E	WM	7	NW		DETROIT RESERVOIR - NONE GIVEN

Authorized Place of Use:

IRRIGATION AND SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
9 S	1 W	WM	16	SW NW		14.3
9 S	1 W	WM	16	SE NW		19.9
9 S	1 W	WM	16	NE SW	3	21.4
9 S	1 W	WM	16	NW SW		19.4
					Total	75.0

7. Transfer Application T-13704 proposes to change from surface water points of diversion to a groundwater point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances	Approximate distance downstream from original points of diversion in miles (mi.)	
9 S	1 W	WM	16	NE SW	3	POA 1 (WELL) - 330 FEET SOUTH AND 290 FEET WEST FROM THE C1/4 OF SECTION 16	RESERVOIR	DETROIT RESERVOIR
							0.3 mi.	26.4 mi.

Transfer Review Criteria [OAR 690-380-0100(14), 690-380-4010(2) and 690-380-2130]

8. 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.
9. A water delivery system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-13704.
10. The water right is subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
11. The proposed point of appropriation meets the requirements of ORS 540.531 and OAR 690-380-2130(2).
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other existing water rights.
14. All other application requirements are met.

Conclusions of Law

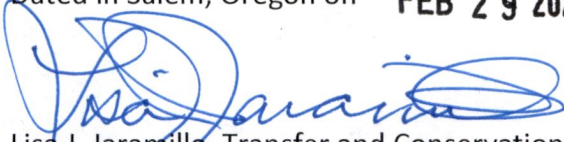
The change from surface water points of diversion to a groundwater point of appropriation proposed in Transfer Application T-13704 is consistent with the requirements of ORS 540.505 to 540.580, OAR 690-380-2130, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change from surface water points of diversion to a groundwater point of appropriation proposed in Transfer Application T-13704 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 45075 and any related decree.
3. Approval of this transfer application does not constitute nor grant legal access onto or through another person's property for purposes of accessing the new point of appropriation.
4. Water right Certificate 45075 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
5. The quantity of water diverted at the new point of appropriation (POA 1 (Well)), shall not exceed the quantity of water lawfully available at the original points of diversion (Reservoir and Detroit Reservoir).
6. The well from which the water is taken under this right shall be constructed so that the use of the well will affect the surface water source similarly to the use of the original authorized points of diversion.
7. The use of water under this right shall be subject to regulation consistent with other water rights from the surface water source and to all other applicable conditions and restrictions that existed at the original point of diversion.
8. All applicable restrictions that existed at the original points of diversion shall apply to the proposed well.
9. The original date of priority shall be retained. However, if within five years after approving the transfer, the Department finds that the transfer results in substantial interference with existing groundwater rights that would not have occurred in the absence of the transfer, the proposed well shall be subordinate to any existing right injured by the transferred water right.

10. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2026**. 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.
11. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on **FEB 29 2024**



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

Mailing date: **MAR 1 - 2024**