BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-12959, Jackson County)	CHANGES IN PLACE OF USE

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

BGE PROPERTIES, LLC 1 WEST MAIN STREET, SUITE 401 MEDFORD, OR 97504

Agent

MIKE MONTERO Dba: MONTERO & ASSOCIATES, LLC 4497 BROWNRIDGE TRRRACE, SUITE 202 MEDFORD, OR 97504

Findings of Fact

- 1. On June 28, 2018, Martin Farms Properties, LLC, filed a transfer application to change the place of use under Certificates 93676 and 93678. The Department assigned the application number T-12959.
- 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. The agent for the applicant submitted a request for assignment to update the applicant's name from Martin Farms Properties, LLC to BGE Properties, LLC. On May 14, 2019, the Department approved the request for assignment and the records have been recorded now showing BGE Properties, LLC as the transfer holder of record.
- 4. On May 28, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12959 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 27, 2019, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary

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.

Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

- On November 25, 2019, the Department issued a Preliminary Determination proposing to approve Transfer T-12959 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 November 26, 2019, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
- 6. The first right to be transferred is as follows:

Certificate:

93678 in the name of MARTIN FARMS PROPERTIES, LLC (perfected

under Permit S-17066)

Use:

SUPPLEMENTAL IRRIGATION and AGRICULTURE USE ON 8.0 ACRES, INCLUDING BUT NOT LIMITED TO SUPPLEMENTAL IRRIGATION AND AGRICULTURE USE, DUST AND FROST

CONTROL, AND FIRE SUPRESSION

Priority Date: JUNE 24, 1946

Rate:

0.10 CUBIC FOOT PER SECOND (cfs)

Period of Use: APRIL 2 TO OCTOBER 31

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, irrigated from direct flow and shall be further limited to a diversion of not to exceed 4.5 acre-feet per acre, for each acre irrigated during the irrigation season from April 2 to October 31, of each year from direct flow and storage from reservoir constructed under Permit R-846, and shall conform to such reasonable

Source:

rotation system as may be order by the proper state officer OLD MINING TUNNEL AND MARTIN RESERVOIR CONSTRUCTED

UNDER PERMIT R-846, A TRIBUTARY OF GRIFFIN CREEK

WATERSHED

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	
38 S	2 W	WM	4	NW NW	44	POD R1 – 60 FEET SOUTH AND 455 FEET EAST FROM THE NW CORNER OF SECTION 4	

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Authorized Place of Use:

{	SUPPLEMENTAL IRRIGATION AND							
Į	AGRICULTURE USE							
1	Twp	Rng	Mer	Sec	Q-Q	Acres		
į	37 S	2 W	WM	33	NE SW	0.8		
	37 S	2 W	WM	33	NW SW	1.8		
	37 S	2 W	WM	33 -	SW SW	4.7		
	37 S	2 W	WM	33	SE SW	0.7		
		8.0						

7. Transfer Application T-12959 proposes to change the place of use for the right to:

SUPPLEMENTAL IRRIGATION AND AGRICULTURE									
	USE								
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres			
37 S	2 W	WM	33	NE SW	95	0.91			
37 S	2 W	WM	33	NW SW	95	3.32			
37 S	2 W	WM,	33	NW SW	91	1.33			
37 S	2 W	WM	33	SW SW	95	2.01			
37 S	2 W	WM	33	SE SW	∽95	0.43			
	Total: 8.00								

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

Certificate: 93676 in the name of MARTIN FARMS PROPERTIES, LLC (perfected

under Permit S-15772)

Use: IRRIGATION and AGRICULTURE on 8.0 ACRES, INCLUDING BUT

NOT LIMITED TO IRRIGATION AND AGRICULTURE, DUST AND

FROST CONTROL AND FIRE SUPRESSION

Priority Date: MAY 11, 1944

Rate: 0.10 CUBIC FOOT PER SECOND (cfs)

Period of Use: APRIL 2 to OCTOBER 31

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 4.5 acre-feet per acre for each acre irrigated during the irrigation season from April 2 to October 31, of each year, and shall conform to such reasonable rotation system as may be ordered by the proper state officer

Source:

A MINING TUNNEL (IN GRIFFIN CREEK WATERSHED), A

TRIBUTARY OF BEAR CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
37 S	2 W	WM	33	sw sw	95	POD T1 - 1325 FEET NORTH FROM THE SW CORNER OF SECTION 33

Authorized Place of Use:

	IRRIGATION AND AGRICULTURE							
Twp	Rng	Mer	Sec	Q-Q	Acres			
37 S	2 W	WM	33	NE SW	0.8			
37 S	2 W	WM	33	NW SW	1.8			
37 S	2 W	WM	33	SW SW	4.7			
37 S	2 W	WM	33	SE SW	0.7			
Total: 8								

9. Transfer Application T-12959 proposes to change the place of use for the right to:

IRRIGATION AND AGRICULTURE							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	
37 S	_2 W	WM	33	NE SW	95	0.91	
37 S	2 W	WM:	_ 33	NW SW	95	3.32	
√37 S	2 W	WM	33	NWSW	. 91	1.33	
37 S	2 W	WM	33	SW SW	95	2.01	
37 S	_2 W	WM	33	SE SW	95	0.43	
	8.00						

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

- 10. Water has been used within the five-year period prior to submittal of the transfer application 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.
- 11. Diversion structures, reservoir, ditches, pipelines and water delivery systems sufficient to use the full amounts of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-12959.
- 12. The proposed changes would not result in enlargement of the rights
- 13. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The changes in place of use proposed in Transfer Application T-12959 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

- 1. The changes in place of use proposed in Transfer Application T-12959 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 93676 and 93678 and any related decree.
- 3. Water right Certificates 93676 and 93678 are cancelled.
- 4. 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 diversion.
 - b. The water user shall maintain the meter or measuring device(s) in good working order.

- c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
- 5. 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 (as required in Special Order Volume 95, Page 917, approving previously approved Transfer Application T-11881) 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.
- 6. The former places of use of the transferred rights, as modified herein, shall no longer receive water under the rights.
- 7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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.
- 8. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem,	Oregon this	JAN 13 2020	
Transaction Datation		0, ,, ,	

Lisa Jaramillo, Transfers and Conservation Section Manager, for

Thomas M. Byler, Director

Oregon Water Resources Department

Mailing date: JAN 1 4 2020