

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

In the Matter of Transfer Application)
T-14103, Grant County)
)
)

FINAL ORDER APPROVING CHANGES IN
PLACE OF USE AND PARTIAL
CANCELLATION OF A WATER RIGHT
CERTIFICATE

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.

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

RICK HUFSTADER
CYNTHIA STRICKLAND
PO BOX NKI16
NAUKATI, AK 99950

Findings of Fact

1. On October 3, 2022, RICK HUFSTADER and CYNTHIA STRICKLAND filed an application to change the places of use under Certificates 25216, 90318, and 90320. The Department assigned the application number T-14103.
2. Notice of the application for transfer was published on October 11, 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 April 14, 2023, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-14103 to the applicants. The Department identified potential non-use issues under Certificate 25216, and enlargement under Certificate 90320. The draft Preliminary Determination cover letter set forth a deadline of May 15, 2023, for the applicants to respond.
4. On May 5, 2023, after discussion with the District 4 Watermaster, the Department extended the deadline for resolving the issues in the draft Preliminary Determination which proposed to deny Transfer Application T-14103 to July 31, 2023.
5. On July 24, 2023, the Department received a revised application, resolving the issues identified in the draft Preliminary Determination proposing to deny Transfer Application T-14103.
6. On November 6, 2023, the Department issued a Preliminary Determination proposing to approve Transfer T-14103 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 7, 2023, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

7. The portion of the first right to be transferred is as follows:

Certificate: 25216 in the name of KATHERINE GEISLER (confirmed by JOHN DAY RIVER (F) Decree)
Use: IRRIGATION OF 3.5 ACRES
Priority Date: 1885
Rate: 1/40 CUBIC FOOT PER SECOND PER ACRE IRRIGATED TO JUNE 1 AND 1/80 CUBIC FOOT PER SECOND PER ACRE THEREAFTER; FURTHER LIMITED TO ONE ACRE-FOOT PER CALENDAR MONTH TO JUNE 1 AND FOUR ACRE-FEET PER ACRE DURING SEASON APRIL 1 TO SEPT. 30, MEASURED AT POINT OF DIVERSION
Period of Use: APRIL 1 TO SEPTEMBER 30
Source: BELSHAW CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
<i>Not specified in certificate</i>				

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	29 E	WM	18	SW SE	3.5

8. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 25216. The application map indicates the location as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot
13 S	29 E	WM	18	NW NW	1

9. Transfer Application T-14103 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
13 S	29 E	WM	18	SW NE	1	0.1
13 S	29 E	WM	18	SE NW	1	0.5
13 S	29 E	WM	18	NE SW	1	0.4
13 S	29 E	WM	18	NW SE	1	2.5
					Total	3.5

10. The portion of the second right to be transferred is as follows:

Certificate: 90318 in the name of RICK A. HUFSTADER AND CYNTHIA STICKLAND (perfected under Permit S-18828)
Use: IRRIGATION of 3.5 ACRES
Priority Date: JUNE 28, 1949
Rate: 0.0875 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, is limited to ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 5.0 ACRE-FEET per acre for each acre irrigated during the irrigation season from April 1 to September 30 of each year.
Period of Use: APRIL 1 TO SEPTEMBER 30
Source: JOHN DAY RIVER, a tributary of COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	29 E	WM	18	SW SE	590 FEET NORTH AND 1980 FEET WEST FROM THE SE CORNER OF SECTION 18

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	
13 S	29 E	WM	18	SW SE	1.8	
13 S	29 E	WM	19	NW NE	1.7	
					Total	3.5

11. Transfer Application T-14103 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	29 E	WM	18	SW SE	3.5

12. The portion of the third right to be transferred is as follows:

Certificate: 90320 in the name of RICK A. HUFSTADER AND CYNTHIA STICKLAND (perfected under Permit S-18828)
Use: IRRIGATION of 0.3 ACRE
Priority Date: JUNE 28, 1949
Rate: 0.0075 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-FORTIETH 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 FIVE ACRE-FEET per acre for each acre irrigated during the irrigation season from April 1 to September 30 of each year.
Period of Use: APRIL 1 TO SEPTEMBER 30
Source: JOHN DAY RIVER, a tributary of COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	29 E	WM	18	SW SE	590 FEET NORTH AND 1980 FEET WEST FROM THE SE CORNER OF SECTION 18

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	29 E	WM	18	SW SE	0.3

13. Transfer Application T-14103 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	29 E	WM	18	SW SE	0.3

Transfer Review Criteria [OAR 690-380-0100(14), 690-380-4010(2) and 690-380-2110(2)]

- 14. 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.
- 15. 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-14103.
- 16. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).

17. On August 17, 2023, the Department determined that there is potential for water authorized under Certificate 25216 reaching the "FROM" lands under Certificates 90318 and 90320. A cut off ditch or other methodology to keep the sources separate will need to be required. A simple cut off ditch would suffice to keep Belshaw Creek water off of John Day River lands after the places of use of the two sources are moved as proposed.
18. The proposed changes, as conditioned, would not result in enlargement of the rights.
19. The proposed changes, as conditioned, would not result in injury to other existing water rights.
20. All other application requirements are met.

Partial Cancellation of a Water Right

21. On July 24, 2023, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of a portion of the right was received from Kyle Sullivan, authorized agent. The portion of the right to be cancelled is as follows:

Certificate: 25216 in the name of KATHERINE GEISLER (confirmed by JOHN DAY RIVER (F) Decree)
Use: IRRIGATION of 4.3 ACRES
Priority Date: 1885
Rate: 1/40 CUBIC FOOT PER SECOND PER ACRE IRRIGATED TO JUNE 1 AND 1/80 CUBIC FOOT PER SECOND PER ACRE THEREAFTER; FURTHER LIMITED TO ONE ACRE-FOOT PER CALENDAR MONTH TO JUNE 1 AND FOUR ACRE-FEET PER ACRE DURING SEASON APRIL 1 TO SEPT. 30, MEASURED AT POINT OF DIVERSION
Period of Use: APRIL 1 TO SEPTEMBER 30
Source: BELSHAW CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
<i>Not specified in certificate</i>				

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	29 E	WM	18	SW SE	4.3

Conclusions of Law

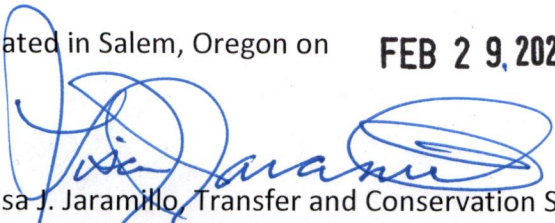
The changes in place of use proposed in Transfer Application T-14103 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled.

Now, therefore, it is ORDERED:

1. The changes in place of use proposed in Transfer Application T-14103 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 places of use described, and is subject to all other conditions and limitations contained in Certificates 25216, 90318, and 90320, 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 place of use.
4. Water right Certificates 25216, 90318, and 90320 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer and cancellation.
5. The former places of use of the transferred rights shall no longer receive water under the rights.
6. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a totalizing flow meter or weir, or, with prior approval of the Director, another suitable measuring device, at each point of diversion (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. Prior to water use on the proposed lands, a cut off ditch or other methodology must be installed to keep Belshaw Creek water off the lands receiving water from the John Day River.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2025**. 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 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**