

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

In the Matter of Transfer Application)	RECONSIDERATION OF A FINAL
T-12966, Jackson County)	ORDER RECORDED IN SPECIAL
)	ORDER VOLUME 113, PAGES
)	462 – 466, WITHDRAWING A FINAL
)	ORDER AND ISSUING A
)	SUPERSEDING FINAL ORDER
)	APPROVING AN ADDITIONAL POINT
)	OF DIVERSION

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

JAMIE ERLICHT
10208 BRIARWOOD DR
LOS ANGELES, CA 90077

Findings of Fact

1. On July 6, 2018, Jamie Erlicht filed an application for an additional point of diversion under Certificates 43573 and 43575. The Department assigned the application number T-12966.
2. Notice of the application for transfer was published on July 10, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 15, 2019, the Department contacted Jamie Erlicht by telephone and on January 24, 2019, by written correspondence to notify the applicant of the deficiencies in the application. The Department requested that the deficiencies be resolved by February 15, 2019. On February 12, 2019, the Department received a valid Evidence of Use Affidavit from the applicant, resolving the deficiencies.

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.

4. On March 8, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12966 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 8, 2019, 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.
5. On April 26, 2019, the Department issued a Preliminary Determination proposing to approve Transfer T-12966 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 April 30, 2019, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
6. On June 26, 2019, the Department issued a Final Order for the notification, recorded at Special Order Volume 113, Pages 462 – 466. Shortly following issuance of the order, the Department determined that the order should be reconsidered due to inconsistency with the statutory authority for processing additional points of diversion due to government action. On its own motion, the Department withdrew the order and reconsidered the acreage as well as the location of a point of diversion, and the length of time allotted for beneficial use.
7. This order is issued to supersede the previous order recorded at Special Order Volume 113, pages 462 – 466, and to correct the acreage, location of a point of diversion, and to allot more time for beneficial use as was requested.
8. The portion of the first right to be transferred is as follows:

Certificate: 43573 in the name of WAYNE H. AND BERTHA O. SAFLEY (perfected under Permit S-4339)
Use: IRRIGATION of 5.0 ACRES
Priority Date: DECEMBER 15, 1919
Rate: 0.065 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, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.
Source: ROGUE RIVER, tributary of PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
35 S	1 W	WM	29	SE NW	2	POD 1 - 2300 FEET SOUTH AND 680 FEET WEST OF THE N 1/4 CORNER OF SECTION 29

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	1 W	WM	29	NE SW	5.0

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

Certificate: 43575 in the name of WAYNE H. AND BERTHA O. SAFLEY (perfected under Permit S-15221)
Use: IRRIGATION of 3.0 ACRES
Priority Date: MARCH 24, 1942
Rate: 0.0362 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 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: ROGUE RIVER, tributary of PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
35 S	1 W	WM	29	SE NW	2	POD 1 - 2300 FEET SOUTH AND 680 FEET WEST OF THE N 1/4 CORNER OF SECTION 29

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	1 W	WM	29	NE SW	3	3.0

10. Transfer Application T-12966 proposes an additional point of diversion approximately 0.2 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	1 W	WM	29	NE SW	POD 2 - 3600 FEET SOUTH AND 632 FEET WEST OF THE N 1/4 CORNER OF SECTION 29

11. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

12. 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 rights are subject to forfeiture under ORS 540.610.

13. A pump, pipeline, and sprinkler 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-12966.
14. The proposed change would not result in enlargement of the rights.
15. The proposed change would not result in injury to other water rights.
16. All other application requirements are met.

Conclusions of Law

The additional point of diversion proposed in Transfer Application T-12966 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The order recorded at Special Order Volume 113, pages 462 – 466 is withdrawn, is of no further force or effect, and is superseded by this order.
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 43573 and 43575 and any related decree.
3. Water right Certificates 43573 and 43575 are cancelled. A new certificate will be issued describing that portion of the rights not affected by this transfer.
4. The quantity of water diverted at the proposed additional point of diversion (POD 2), together with that diverted at the original point of diversion (POD 1), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 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 diversion.
 - 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. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device

was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.

7. 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 change 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.

Signed at Salem, Oregon this AUG 07 2019 .



Lisa J. Jaramillo, Transfer and Conservation Section Manager for
THOMAS M. BYLER, DIRECTOR
Oregon Department of Water Resources

Mailing date: AUG 08 2019