

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

In the Matter of Transfer Application ) FINAL ORDER  
T-12787, Umatilla County ) APPROVING AN ADDITIONAL POINT  
 ) OF APPROPRIATION AND  
 ) DIMINUTION OF PORTIONS OF  
 ) WATER RIGHTS

**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.

**Applicant**

ROBERTSON FAMILY, LLC  
ATTN: STEPHEN ROBERTSON  
1076 SE GARRISON VILLAGE WAY  
COLLEGE PLACE, WA 99324

**Agent**

WATER RIGHT SOLUTIONS, LLC  
ATTN: BILL NEVE  
PO BOX 511  
WALLA WALLA, WA 99362

**Findings of Fact**

1. On December 14, 2017, Robertson Family, LLC, filed an application for an additional point of appropriation under Certificate 15553. The Department assigned the application number T-12787.
2. Notice of the application for transfer was published on December 26, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The Department determined that there are other water rights appurtenant to the authorized lands proposed in the transfer. On June 11, 2018, the Department notified the applicant that there exists multiple, stacked primary irrigation rights on the lands and requested resolution of these layered conflicts by obtaining affidavits from the land owner to diminish portions of these rights to supplemental irrigation.

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. Water right Certificates 92719, 92588 and 15553 were all issued for primary irrigation. Pursuant to OAR 690-380-5120, the agent stated the landowner requests to diminish portions of Certificates 15553 (priority date of 1945) and 92719 (priority date of 1907) to supplemental irrigation for 9.06 acres, (footprint of Certificate 15553). On September 4, 2018, the agent for the applicant submitted revised application pages, a new map and two notarized affidavits for the diminution of Certificates 15553 and 92719 from primary irrigation to supplemental irrigation and is further described below in Findings of Fact No. 15 and 16.
5. On September 7, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12787 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 7, 2018, 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.
6. On January 14, 2019, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12787 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on January 15, 2019, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

**Certificate:** 15553 in the name of J. T. WHARTON (perfected under Permit U-164)  
**Use:** IRRIGATION of 9.06 ACRES  
**Priority Date:** MAY 29, 1945  
**Rate:** 0.34 CUBIC FOOT PER SECOND  
**Limit:** Limited to 0.0375 cfs of one cubic foot per second per acre  
**Source:** A WELL within the WALLA WALLA RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	33	NE SW	None given

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	33	NE SW	9.06*

\*Note: there are a total of three primary water rights appurtenant to these lands and two of them will be diminished to supplemental irrigation. See Findings of Fact No. 15 and 16 below.

8. Certificate 15553 does not describe the exact location of the point of appropriation. However, information from the Certified Water Rights Examiner's map based on a recent field visit and subsequent survey, indicate that the original point of appropriation is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	33	NE SW	WELL 1 - 459 FEET SOUTH AND 386 FEET WEST FROM THE CENTER OF SECTION 33



9. Transfer Application T-12787 proposes an additional point of appropriation southwest approximately 800 feet to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	33	NE SW	WELL 2 - 1946 FEET NORTH AND 1581 FEET EAST FROM THE SW CORNER OF SECTION 33

10. The Department finds, based on the information provided, that the proposed point of appropriation, Well 2 (UMAT 4878) develops the same (source) aquifer as that of the original authorized Well 1 (UMAT 4920) and complies with the Department's administrative rule under OAR 690-380-2110 (2) and OAR 690-380-4010(2)(e). The source aquifer is identified as being within the sedimentary aquifer.

***Transfer Review Criteria (OAR 690-380-4010)***

11. Water has been used within the last five years prior to the submittal of Transfer Application T-12787 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.
12. A well, 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-12787.
13. The proposed change, as conditioned herein, would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.
15. All other application requirements are met.

***Diminution of Certain Water Rights***

16. On September 4, 2018, the deeded landowner submitted an affidavit for the partial diminution of a water right certificate.

The portion of the right proposed to be diminished from primary irrigation to supplemental irrigation is described as follows:

**Certificate:** 15553 in the name of J. T. WHARTON (perfected under Permit U-164)  
**Use:** IRRIGATION of 9.06 ACRES  
**Priority Date:** MAY 29, 1945  
**Rate:** 0.34 CUBIC FOOT PER SECOND  
**Limit:** limited to 0.0375 cfs per acre  
**Source:** A WELL within the WALLA WALLA RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	33	NE SW	none given

**Place of Use to be Diminished to Supplemental Irrigation:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	33	NE SW	9.06

17. Also on September 4, 2018, the landowner submitted an affidavit for the voluntary Diminution of an entire water right certificate.

The entire right proposed to be diminished from primary irrigation to supplemental irrigation is described as follows:

**Certificate:** 92719 in the name of FIRST GROWTH PROPERTIES, LLC (confirmed by decree of the Circuit Court of the State of Oregon for Umatilla County, Vol. 12, Page 9)  
**Use:** IRRIGATION of 5.0 ACRES  
**Priority Date:** 1907  
**Rate:** 0.188 CUBIC FOOT PER SECOND  
**Limit:** ONE AND A HALF MINER’S INCHES PER ACRE (0.0375 cfs per acre)  
**Source:** WASTE WATER, tributary to the WALLA WALLA RIVER

**Place of Use to be Diminished to Supplemental Irrigation:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	33	NE SW	5.0

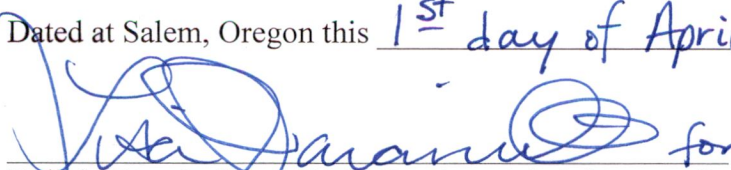
**Conclusions of Law**

The additional point of appropriation proposed in Transfer Application T-12787 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000, and the diminished rights should be diminished.

**Now, therefore, it is ORDERED:**

1. The additional point of appropriation proposed in Transfer Application T-12787 is approved. The portions of the rights that have been diminished are diminished.
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 15553 and any related decree.
3. A portion of the water right evidenced by water right Certificate 15553 and the entire Certificate 92719 are diminished from primary irrigation to supplemental irrigation as described above in Findings of Fact Nos. 3, 4, 14 and 15.
4. Water right Certificates 15553 and 92719 are cancelled. New certificates shall be issued to confirm those portions of the rights NOT modified by this transfer and the diminishments.
5. The quantity of water diverted at the new additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.
6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
7. Water use measurement conditions:
  - a. Before water use may begin under this order, the water user shall install totalizing flow meters, 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 device(s); provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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.
9. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 1<sup>st</sup> day of April, 2019.

  
Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

Mailing date: APR 02 2019