

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

In the Matter of Transfer Application)	FINAL ORDER
T-13111, Baker County)	APPROVING A CHANGE 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

SEXTON LAND LLC
47307 ANTHONY LAKES HWY
HAINES, OR 97833

Findings of Fact

1. On January 23, 2019, SEXTON LAND LLC filed an application to change the place of use under Certificate 83738. The Department assigned the application number T-13111.
2. Notice of the application for transfer was published on January 29, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 19, 2019, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13111 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 19, 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.
4. On December 20, 2019, the Department issued a Preliminary Determination proposing to approve Transfer T-13111 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 December 24, 2019, pursuant to ORS 540.520 and OAR 690-380-4020. No protests 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.

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

Certificate: 83738 in the name of SEXTON LAND LLC (confirmed by North Powder River Decree)
Use: IRRIGATION of 16.4 ACRES
Priority Date: 1873 for 8.2 ACRES AND 1895 for 8.2 ACRES
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 a diversion of 0.3 cubic foot per second from March 1 – July 1 and 0.2 cubic feet per second July 1 – October 1, or its equivalent for each acre irrigated, 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.
Source: NORTH POWDER RIVER, a tributary of POWDER RIVER
Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	38 E	WM	5	NW NE	HUTCHINSON HILLSIDE / GARDNER MILLRACE DITCH - 2760 FEET SOUTH AND 2380 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 32, T6S, R38E, WM

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	Priority
7 S	39 E	WM	7	NW SW	8.2	1895
7 S	39 E	WM	7	SW SW	8.2	1873

6. Certificate 83738 contained a scrivener's error in the description of the location of the point of diversion. Certificate 83738 describes the authorized point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	38 E	WM	5	NW NE	HUTCHINSON HILLSIDE / GARDNER MILLRACE DITCH - 2760 FEET SOUTH AND 2380 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 32, T6S, R38E, WM

Based on the metes and bounds from Certificate 83738 and the final proof map, the actual location should be:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	5	NW NE	HUTCHINSON HILLSIDE / GARDNER MILLRACE DITCH - 2760 FEET SOUTH AND 2380 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 32, T6S, R38E, WM

7. Transfer Application T-13111 proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres	Priority
7 S	39 E	WM	7	NW SW	8.2	1873
7 S	39 E	WM	7	SW SW	8.2	1895

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

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 diversion structure and ditch 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-13111.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.
12. All other application requirements are met.

Conclusions of Law

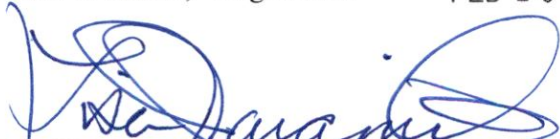
The change in place of use proposed in Transfer Application T-13111 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

If Transfer Application T-13111 is approved, the final order will include the following:

1. The change in place of use proposed in Transfer Application T-13111 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 83738 and any related decree.
3. Water right Certificate 83738 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. The former place of use of the transferred right shall no longer receive water under the right.
5. 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 change and full beneficial use of the water.
6. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this **FEB 10** 2020



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing Date: **FEB 11** 2020