

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

In the Matter of Transfer Application) FINAL ORDER
T-14063, Clackamas County) APPROVING CHANGE IN PLACE OF USE

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

U.S. FOREST SERVICE
MT. HOOD NATIONAL FOREST
70220 E HWY 26
ZIGZAG, OR 97049

Findings of Fact

1. On August 1, 2022, U.S. FOREST SERVICE, MT. HOOD NATIONAL FOREST filed an application to change the place of use under Certificate 88726. The Department assigned the application number T-14063.
2. Notice of the application for transfer was published on August 9, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. Transfer Application T-14063 describes the delivery system as “Water is withdrawn from the springs and delivered to a Day Tank. Two 135 gpm, high-head, multi-stage pumps deliver water through a 4-inch diameter, extra-strength, steel pipe to the cartridge filters/chlorination facilities at the maintenance buildings. The system has the following storage reservoirs: a 200,000-gallon buried concrete reservoir above the lodge; a 50,000-gallon buried concrete reservoir above the lodge; a 180,000-gallon buried concrete reservoir above the lodge for fire suppression; and, a 4,000-gallon buried concrete reservoir above Silcox Hut. Water is distributed to Timberline Lodge, Wy’East Day Lodge, Silcox Hut, Phlox Point Cabin, and Alpine Campground, along with appurtenant services for water use about the resort and ski area.”

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 September 8, 2022, the Department's Watermaster completed review of Transfer Application T-14063. The review indicates "Previous communication with the applicant's agent indicated that the springs listed on this certificate are no longer in use, and have been replaced by a well, HOOD 50023. While injury is not likely to result because the change was made several years ago, a transfer is still needed to authorize use of the well." The Watermaster also indicated "A surface water to ground water transfer could be filed to address the issue above."
5. On September 19, 2022, the Agent for the applicant submitted a revised table 2 more accurately describing the "to lands".
6. On September 20, 2022, the Agent for the applicant submitted a new map matching the new table 2 "to lands".
7. On May 3, 2023, the Department contacted the agent for the applicant regarding a deficiency, specifically the Watermaster's review indicating a change in source. The Department requested the agent for the applicant provide clarifying documentation supporting the beneficial use of water from the authorized point of diversion described on Certificate 88726.
8. On August 9, 2023, the agent for the applicant submitted Quality Data forms from the Oregon Health Authority (OHA), which establish the beneficial use of the surface water point of diversion, satisfying the deficiency.
9. On January 8, 2024, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-14063 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of February 8, 2024, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination, noting a scrivener's error in the description of the delivery system in Finding of Fact 3.
10. On January 24, 2024, the agent for the applicant requested to extend the date for completion of full beneficial use of the water to October 1, 2030.
11. On January 29, 2024, the Department issued a Preliminary Determination proposing to approve Transfer Application T-14063 and mailed 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 30, 2024, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
12. The portion of the right to be transferred is as follows:
 - Certificate:** 88726 in the name of U.S. FOREST SERVICE MOUNT HOOD NATIONAL FOREST (perfected under Permit S-26057)
 - Use:** COMMERCIAL USE
 - Priority Date:** APRIL 7, 1959

Rate: 0.275 CUBIC FOOT PER SECOND
Source: TWO UNNAMED SPRINGS, tributary to SANDY RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	9 E	WM	7	SE SW	500 FEET NORTH AND 2840 FEET WEST FROM THE SE CORNER OF SECTION 7

Authorized Place of Use:

COMMERCIAL USE				
Twp	Rng	Mer	Sec	Q-Q
3 S	9 E	WM	6	SE SE

13. Transfer Application T-14063 also proposes to change the place of use of the right to:

COMMERCIAL USE
TIMBERLINE SKI AREA SPECIAL USE PERMIT BOUNDARY US FOREST SERVICE, MT. HOOD NATIONAL FOREST AND ALPINE CAMPGROUND, U.S. FOREST SERVICE, MT. HOOD NATIONAL FOREST

Transfer Review Criteria (OAR 690-380-4010)

14. 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.
15. A pump and pipeline 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-14063.
16. The proposed change, as conditioned, would not result in enlargement of the right.
17. The proposed change, as conditioned, would not result in injury to other water rights.
18. All other application requirements are met.

Conclusion of Law

The change in place of use proposed in Transfer Application T-14063 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in Transfer Application T-14063 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 88726 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 Certificate 88726 is cancelled. A new certificate will be issued describing the portion of the right not affected by this transfer.
5. Water shall be acquired from the same source of surface water as the original point of diversion.
6. The former place of use of the transferred right shall no longer receive water under the right.
7. 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 (new and existing).
 - b. The water user shall maintain the meter or measuring device 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 device 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, 2030**. 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 in Salem, Oregon on **MAR 13 2024**



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR
Oregon Water Resources Department