

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

In the Matter of Transfer Application)	FINAL ORDER
T-12634, Washington County)	APPROVING A CHANGE IN PLACE
)	OF USE AND PARTIAL
)	CANCELLATION OF A WATER
)	RIGHT

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

JOE VAN DYKE
BRENDA VAN DYKE
730 SW 331ST AVE
HILLSBORO, OR 97123

Findings of Fact

1. On April 6, 2017, JOE VAN DYKE OR BRENDA VAN DYKE filed an application to change the place of use under Certificates 34966, 54283, and 35191. The Department assigned the application number T-12634.
2. Notice of the application for transfer was published on April 11, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 5, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12634 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of May 7, 2018, for the applicants to respond. The applicants requested the completion date be extended to October 1, 2023 and for the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

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 June 18, 2018, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12634 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on June 19, 2018 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
5. The portion of the first right to be transferred is as follows:

Certificate: 34966 in the name of GERALD VAN DYKE (perfected under Permit S-23505)
Use: IRRIGATION of 4.6 ACRES
Priority Date: MARCH 7, 1955
Rate: 0.05 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: DAIRY CREEK, tributary to the TUALATIN RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
1 S	3 W	WM	1	SW NW	50

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 S	3 W	WM	2	NW SE	50	4.6

6. Transfer Application T-12634 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 S	3 W	WM	2	SE NE	50	4.6

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

Certificate: 54283 in the name of GERALD VAN DYKE (perfected under Permit G-7031)
Use: IRRIGATION of 4.6 ACRES
Priority Date: NOVEMBER 5, 1976
Rate: 0.03 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL within the DAIRY CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
1 S	3 W	WM	2	SE NE	50	2740 FEET NORTH AND 220 FEET WEST FROM THE SE CORNER OF SECTION 2

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 S	3 W	WM	2	SE NE	50	4.6

8. Transfer Application T-12634 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 S	3 W	WM	2	NW SE	50	4.6

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

Certificate: 35191 in the name of GERALD VAN DYKE (perfected under Permit S-31708)
Use: SUPPLEMENTAL IRRIGATION of 4.6 ACRES
Priority Date: MARCH 15, 1966
Limit/Duty: Portion of storage from reservoir constructed under Permit No. R-4809.
Source: RESERVOIR constructed under Application R-41992, Permit No. R-4809, a tributary of TUALATIN RIVER.

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
1 S	3 W	WM	1	SW NW	50	3250 FEET NORTH AND 570 FEET EAST FROM THE SW CORNER OF SECTION 1

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 S	3 W	WM	2	NW SE	50	4.6

10. Transfer Application T-12634 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 S	3 W	WM	2	SE NE	50	4.6

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

11. 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.
12. 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-12634.

13. The proposed change would not result in enlargement of the rights.
14. The proposed change would not result in injury to other water rights.
15. All other application requirements are met.

Partial Cancellation of a Water Right

16. On April 6, 2017, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from H G LLC (Helen Van Dyke). The right to be cancelled is as follows:

Certificate: 54283 in the name of GERALD VAN DYKE (perfected under Permit G-7031)
Use: SUPPLEMENTAL IRRIGATION of 4.6 ACRES
Priority Date: NOVEMBER 5, 1976
Rate: 0.03 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL in the DAIRY CREEK BASIN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
1 S	3 W	WM	2	SE NE	50	2740 FEET NORTH AND 220 FEET WEST FROM THE SE CORNER OF SECTION 2

Authorized Place of Use to be Cancelled:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 S	3 W	WM	2	NW SE	50	4.6

Conclusions of Law

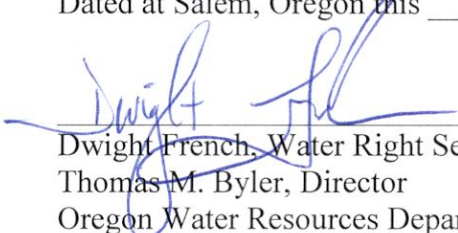
The change in place of use proposed in Transfer Application T-12634 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in Transfer Application T-12634 is 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 place of use described, and is subject to all other conditions and limitations contained in Certificates 34966, 54283, and 3519 and any related decree.

3. Water right Certificates 34966, 54283, and 3519 are cancelled. New certificates will be issued describing the portions of the rights not affected by this transfer and cancellation.
4. 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 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 devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
5. The former place of use of the transferred rights shall no longer receive water under the rights.
6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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.
7. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this JUL 31 2018,


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

Mailing date: AUG 01 2018