

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

In the Matter of Transfer Application        )        **FINAL ORDER APPROVING A**  
T-11745, Josephine County                 )        **TEMPORARY CHANGE IN PLACE OF**  
  )        **USE**

**Authority**

ORS 540.505 to 540.580 establish the process in which a water right holder may submit a request to temporarily transfer the place of use and, if necessary to convey the water to the temporary place of use, the point of diversion authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

PADRE PROPERTIES, LLC  
RICHARD M. BRADEN, MEMBER  
PO BOX 1032  
HUGHSON, CA 95326

**Findings of Fact**

1. On February 21, 2014, RICHARD M. BRADEN, MEMBER OF PADRE PROPERTIES, LLC filed an application to temporarily change the place of use under Certificates 75327 and 88666 for a period of five years. The Department assigned the application number T-11745.
2. Notice of the application for transfer was published on March 4, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The portion of the first right to be temporarily transferred is as follows:  

**Certificate:**        75327 in the name of ALVIN AND EDITH V. PHILLIPS  
**Use:**                IRRIGATION of 5.05 ACRES  
**Priority Date:**    1857  
**Rate:**             0.10 CUBIC FOOT PER SECOND  
**Limit/Duty:**      The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.10 cubic foot per second, and the use of water for irrigation purposes shall be confined to the season

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, 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.

April 1 to October 31 of each year, or its equivalent in case of rotation, measured at the point of diversion from the source.

**Period of Use:** April 1 to October 31

**Source:** SUCKER CREEK, a tributary of the ILLINOIS RIVER

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
39 S	8 W	WM	35	SW NE	40	4.47
39 S	8 W	WM	35	NW SE	40	0.58

4. Certificate 75327 does not describe the location of the point of diversion, however information is available from the applicant indicating that the point of diversion is located as follows:

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
39 S	8 W	WM	35	NW SE	40	910 FEET SOUTH AND 1350 FEET WEST FROM THE E1/4 CORNER OF SECTION 35

5. Temporary Transfer Application T-11745 proposes to temporarily change the place of use of the right to irrigated strips four feet wide alternating with non-irrigated strips four feet wide within a larger land parcel. The acreage below represents the irrigated area:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
39 S	8 W	WM	35	SW NE	40	4.60
39 S	8 W	WM	35	SE NE	40	0.30
39 S	8 W	WM	35	NW SE	40	0.15

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

**Certificate:** 88666 in the name of PADRE PROPERTIES, LLC

**Use:** IRRIGATION of 3.4 ACRES

**Priority Date:** 1857

**Rate:** 0.043 CUBIC FOOT PER SECOND

**Limit/Duty:** The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 0.043 cubic foot per second, and that the use of water for irrigation purposes shall be confined to the season April 1st to October 31st of each year, or its equivalent in case of rotation, measured at the point of diversion.

**Period of Use:** APRIL 1 TO OCTOBER 31

**Source:** SUCKER CREEK, tributary to ILLINOIS RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
39 S	8 W	WM	35	NE SE	40	NONE GIVEN

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
39 S	8 W	WM	35	SW NE	40	2.2
39 S	8 W	WM	35	SE NE	40	1.2

7. Certificate 88666 does not describe the location of the point of diversion, however information is available from the applicant indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
39 S	8 W	WM	35	NW SE	40	910 FEET SOUTH AND 1350 FEET WEST FROM THE E1/4 CORNER OF SECTION 35

8. Temporary Transfer Application T-11745 proposes to temporarily change the place of use of the right to irrigated strips four feet wide alternating with non-irrigated strips four feet wide within a larger land parcel. The acreage below represents the irrigated area:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
39 S	8 W	WM	35	NE NE	40	0.06
39 S	8 W	WM	35	SW NE	40	1.38
39 S	8 W	WM	35	SE NE	40	1.96

***Temporary Transfer Review Criteria***

9. Water has been used within the last five years according to the terms and conditions of the rights. There is no evidence available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
10. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
11. The proposed temporary change in place of use could result in enlargement of the rights if the application of water extends beyond the proposed place of use. Absent soil moisture monitoring, it would be impossible to determine whether or not enlargement was occurring.
12. Adherence to the water flow measurement and soil moisture monitoring conditions listed below would provide the tools necessary to determine that enlargement was not occurring.
13. The proposed changes, as conditioned, would not result in enlargement of the rights.
14. The proposed changes, as conditioned, would not result in injury to other water rights. This finding is made through an abbreviated review recognizing that the transfer may be revoked under ORS 540.523(5) if the Department later finds that the transfer is causing injury to any existing water right.

## Conclusions of Law

The temporary changes in place of use proposed in application Temporary Transfer Application T-11745 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

### Now, therefore, it is ORDERED:

1. The temporary changes in place of use proposed in Temporary Transfer Application T-11745 are approved.
2. The water user shall install and maintain a water flow and soil moisture monitoring system.
  - 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 and on the mainline serving the property. The meter shall only measure water used by Padre Properties LLC and should be located prior to any laterals off the mainline.
  - 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.
  - d) The monitoring system shall include Gro-Point Sensors or a similar monitoring system capable of accuracy that is equivalent to or superior to the level of accuracy provided by the Gro-Point system. The type of system and installation plans must be approved by the Watermaster prior to installation.
  - e) The soil moisture monitoring sites shall be selected for each soil type, slope, and crop type. Additional soil moisture monitoring stations shall be installed as required by the Watermaster where conditions dictate more monitoring stations are required to effectively determine irrigation is occurring where there is an appurtenant water right. The monitoring program, including both the number and location of the monitoring sites, shall be approved by the Watermaster prior to installation.
  - f) Control soil moisture monitoring site(s) shall be selected for each soil type and slope that receives only natural moisture from the atmosphere, and does not receive direct irrigation water nor irrigation run-off.
  - g) Soil moisture content shall be monitored continuously or collected at a minimum of weekly intervals until one week past the end of the irrigation season. Soil moisture data collected from the monitoring system shall be reported to the Watermaster in summary format including equipment used and monitoring data listed by station and measurement field, as approved by the Watermaster.
  - h) Soil moisture reports shall be made during the first week prior to the irrigation season and once per week during the first three weeks of the irrigation season. Unless

otherwise required by the Watermaster, soil moisture data collected shall be reported to the Watermaster within 3 days of the data collection date. Reporting requirements may be modified, as dictated by the Watermaster or upon written request from the water user subject to approval of the Watermaster. However, review of the monitoring program can occur at any time with a formal request from the water user or the Watermaster. Modification to the monitoring program may occur at any time as deemed necessary and/or appropriate by the Watermaster.

- i) Upon reasonable notice the water user shall provide the Watermaster access to metering equipment and moisture monitoring stations as well as access to monitoring data and flow data, including access to real time data on an internal web site or computer.
  - j) The water user shall promptly inform the Watermaster of any situation that results in the application of water to any land without a water right, including but not limited to the areas between crop rows. The water user shall also inform the Watermaster of the course of action taken by the water user to correct the problem and prevent the future occurrence of similar events.
  - k) If water is applied to lands without water rights, including but not limited to, the area between the crop rows, the Watermaster may regulate the water use until the soil moisture and flow data demonstrate that the areas without water rights are no longer receiving water.
  - l) If, at any time the Watermaster determines that the water user has not taken all necessary precautions to ensure that areas without appurtenant water rights, including areas between crop rows, are not receiving water this temporary transfer may be terminated. If this transfer is terminated, the water rights subject to this transfer will revert to their original place of use.
3. The former place of use **shall not** be irrigated as part of these water rights during the 2014, 2015, 2016, 2017 and 2018 irrigation seasons.
  4. The use shall revert to the authorized place of use at the end of the 2018 irrigation season.
  5. The approval of this temporary transfer may be revoked or modified if the Department finds the changes cause injury to any existing water right.
  6. A subsequent application for permanent transfer of Certificates 75327 and 88666 shall be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380. Approval of this temporary transfer does not establish a precedent for approval of a subsequent application filed for a permanent transfer.
  7. The use of water at the temporary place of use authorized by this transfer shall be in accordance with the terms and conditions of Certificates 75327 and 88666.
  8. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.

9. The use of the remaining water rights described by Certificates 75327 and 88666 shall continue to be in accordance with the terms and conditions of Certificates 75327 and 88666.

Dated at Salem, Oregon this 4th day of April, 2014.

  
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Dwight French, Water Right Services Administrator, for  
PHILLIP C. WARD, DIRECTOR

Mailing Date: APR 17 2014