

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

In the Matter of Transfer Application	)	CORRECTING FINAL ORDER
T-13154, Umatilla County	)	APPROVING A TEMPORARY
	)	CHANGE IN PLACE OF USE

**Authority**

Oregon Revised Statute (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.

Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

IVAN COOK  
1870 SOUTH 1<sup>ST</sup> STEET  
HERMISTON, OR 97838

**Agent**

DR. PAUL WATTENBURGER  
IRZ CONSULTING  
500 NORTH 1ST STREET  
HERMISTON, OR 97838

**Findings of Fact**

1. On March 25, 2019, IVAN COOK filed an application to temporarily change the place of use under Certificates 87368 and 87374 for a period of one year. The Department assigned the application number T-13154.
2. Notice of the application for transfer was published on April 2, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 17, 2019, the Department notified the agent for the applicant that Certificate 87374 has been allocated 0 acre feet under the Stage Gulch Critical Groundwater Area (SGCGWA) final order for 2019. On June 3, 2019, the agent for the applicant submitted a request to withdraw Certificate 87374 from the transfer.
4. On July 22, 2019, the Department issued a Final Order, recorded at Special Order Volume 113, Pages 658-661, approving Temporary Transfer T-13154.
5. During the week of August 5, 2019, the Watermaster noticed a portion of land was irrigated despite that portion being denied on a temporary transfer (T-13154, the portion not approved

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.

transferred 31.4 acres off of Certificate 87374). Subsequent conversations between the Port of Umatilla and the Department revealed that the denied portion of the transfer was rejected due to no allocation to Certificate 87374 for 2019. Further investigation revealed that, given the priority date, Certificate 87374 would have received an allocation for 2019 if they had requested an allocation.

6. Upon review of the July 19, 2018 Proposed Order issued to the Port of Umatilla for the year 2019 under Certificate 87374 from Subarea A of the SGCGWA, the Department determined that it would reconsider the July 19, 2018 Proposed Order. In order to resolve the matter, the Department is withdrawing the July 19, 2018 Proposed Order and will issue a Superseding Proposed Order Allocating Groundwater and Opportunity for Hearing.
7. On August 14, 2019, the applicant's agent submitted a revised map, identifying a change in place of use for 31.4 acres. The Department reconsidered the Final Order issued on July 22, 2019, as the 31.4 acres proposed for a change in place of use were removed, due to not receiving a groundwater allocation under the SGCGWA.
8. On August 16, 2019, the Department issued a Superseding Proposed Order Allocating Groundwater and Opportunity for Hearing. This supersedes the previous Proposed Order dated July 19, 2019, which allocated 63.0 acre-feet of water to the Port of Umatilla for the year 2019 from Subarea A of the SGCGWA, to be used under the terms of Certificate 87374.
9. The portion of the right to be temporarily transferred is as follows:

**Certificate:** 87368 in the name of IVAN COOK (perfected under Permit G-7183)  
**Use:** IRRIGATION OF 25.9 ACRES  
**Priority Date:** FEBRUARY 25, 1977  
**Rate:** 0.32 CUBIC FOOT PER SECOND (CFS), BEING 0.27 CFS FROM WELL 1 AND 0.05 CFS FROM WELL 3  
**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 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** WELLS 1 AND 3, within the UMATILLA RIVER BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Well	Measured Distances
4 N	28 E	WM	23	SW NE	3	1350 FEET SOUTH AND 1330 FEET WEST FROM THE NE CORNER OF SECTION 23
4 N	28 E	WM	23	SW SE	1	1210 FEET NORTH AND 1800 FEET WEST FROM THE SE CORNER OF SECTION 23

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	28 E	WM	23	NE NE	31.4
4 N	28 E	WM	23	SE NE	25.9
Total					57.3

10. Transfer Application T-13154 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	28 E	WM	23	NE SE	4.6
4 N	28 E	WM	23	SE SE	4.3
4 N	28 E	WM	24	NW SW	24.6
4 N	28 E	WM	24	SW SW	23.8
Total					57.3

**Temporary Transfer Review Criteria**

11. Water has been used within the last five years according to the terms and conditions of the right. There is no evidence available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
12. Wells, pumps, pipeline and sprinkler irrigation systems sufficient to use the full amount of water allowed under the existing right are present.
13. The proposed change 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.
14. Based upon the allocation of 63.0 acre-feet of water for the year 2019 from Subarea A of the SGCGWA to be used under the terms of Certificate 87374, the Department is reconsidering its Final Order on T-13154.

**Conclusions of Law**

The temporary change in place of use proposed in Temporary Transfer Application T-13154 is consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

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

1. The temporary change in place of use proposed in Temporary Transfer Application T-13154 is approved.
2. The former place of use **shall not** be irrigated as part of this water right during the 2019 irrigation season.
3. The use shall revert to the authorized place of use at the end of the 2019 irrigation season.

4. The approval of this temporary transfer may be revoked or modified if the Department finds the change causes injury to any existing water right.
5. A subsequent application for permanent transfer of Certificate 87368 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.
6. The use of water at the temporary place of use authorized by this transfer shall be in accordance with the terms and conditions of Certificate 87368.
7. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
8. 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 new point of diversion.
  - 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 is located within a private structure, the Watermaster shall request access upon reasonable notice.
9. The use of the remaining water right described by Certificate 87368 shall continue to be in accordance with the terms and conditions of Certificate 87368.
10. The Final Order approving Temporary Transfer T-13154 issued on July 22, 2019, recorded at Special Order Volume 113, Pages 658-661, is withdrawn and is of no further force or effect.

Dated in Salem, Oregon on **SEP 10 2019**

  
Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
THOMAS M BYLER, DIRECTOR  
Oregon Water Resources Department

Mailing Date: SEP 11 2019