

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-13459, Wallowa County)	CHANGE IN POINT OF DIVERSION
)	AND PLACES 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

ERL MCLAUGHLIN
65708 SUNRISE RD
ENTERPRISE, OR 97828

Findings of Fact

1. On June 5, 2020, ERL MCLAUGHLIN filed an application to change the point of diversion and place of use under Certificate 7716, and to change the place of use under Certificates 9045, 9046, 9311, and 48403. The Department assigned the application number T-13459.
2. Notice of the application for transfer was published on June 16, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 5, 2020, the Department contacted the applicant by written correspondence to notify the applicant of deficiencies in the application. An Evidence of Use Affidavit and supporting documentation was submitted for only Certificate 7716. The application included only one map. Pursuant to OAR 690-380-3100(1)(i), if the proposed transfer involves changes in place of use or character of use for more than three water rights, a separate map shall be provided for each water right. Additionally, Table 2 under Certificates 9045, 9046, and 48403 incorrectly described the places of use being transferred. The Department requested that the deficiencies be resolved by November 5, 2020.

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 October 19, 2020, the applicant submitted a revised Table 2 for Certificates 9045, 9046, and 48403.
5. On October 30, 2020, the Department received Evidence of Use Affidavits and supporting documentation for Certificates 9045, 9046, 9311, and 48403.
6. On November 23, 2020, the Department received a separate map for Certificates 7716, 9311, and 48403, pursuant to OAR 690-380-3100(1)(i).
7. On December 9, 2020, the Department received separate maps for Certificates 9045 and 9046, resolving the deficiencies.
8. On January 21, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13459 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 22, 2021, 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.
9. On May 5, 2021, the Department issued a Preliminary Determination proposing to approve Transfer T-13459 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 May 11, 2021, and in the Wallowa County Chieftain newspaper on May 12 and 19, 2021 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

- Certificate:** 7716 in the name of BIG BEND WATER DITCH COMPANY (confirmed by WALLOWA RIVER (F))
- Use:** IRRIGATION of 15.8 ACRES
- Priority Date:** FEBRUARY 1884
- Rate:** LIMITED TO AN AMOUNT ACTUALLY BENEFICIALLY USED FOR SAID PURPOSES
- Limit/Duty:** Shall not exceed 1.5 acre feet per acre during any period of thirty days prior to July 31st of each year, and thereafter not to exceed 1.0 acre foot per acre during the entire remainder of the irrigation season.
- Source:** WALLOWA RIVER, a tributary of the GRANDE RONDE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
<i>Not specified in certificate</i>					

Authorized Place of Use:

IRRIGATION – TRACT NO. 15					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	45 E	WM	29	NE SW	10.0
2 S	45 E	WM	29	NW SW	5.8
Total					15.8

11. The Department received information from the applicant that better describes the location of the authorized points of diversion for Certificate 7716 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	45 E	WM	31	NE NE	BIG BEND DITCH - 550 FEET SOUTH AND 800 FEET WEST FROM THE NE CORNER OF SECTION 31
3 S	45 E	WM	5	NE NW	DAM - 940 FEET SOUTH AND 1500 FEET EAST FROM THE NW CORNER OF SECTION 5

12. Transfer Application T-13459 proposes to move the authorized points of diversion downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original points of diversion in miles (mi.)	
2 S	44 E	WM	24	SE NE	LOWER ALDER SLOPE - 1090 FEET NORTH AND 390 FEET WEST FROM THE E1/4 CORNER OF SECTION 24	BIG BEND DITCH	DAM
						2.9 mi.	4.5 mi.

13. Transfer Application T-13459 also proposes to change the place of use of the right to:

IRRIGATION – TRACT 15						
Twp	Rng	Mer	Sec	Q-Q	Acres	
1 S	44 E	WM	32	SE SE	2.6	
1 S	44 E	WM	33	SW SW	13.2	
Total					15.8	

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

Certificate: 9045 in the name of ALDER SLOPE DITCH COMPANY (perfected under Permit S-6723)

Use: IRRIGATION of 2.8 ACRES

Priority Date: MAY 15, 1924

Rate: 0.04 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 acre, or its equivalent in case of rotation.

Source: HURRICANE CREEK AND NUMEROUS SPRINGS, AND SPRING CREEKS INCLUDING SCOTCH CREEK, BEING ALL WATERS OF ANY NATURE INTERCEPTED BY CANAL, tributary of WALLOWA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
2 S	44 E	WM	24	SW NE

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	
2 S	44 E	WM	5	NE NE	1.3	

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	44 E	WM	5	SE NE	1.5
Total					2.8

15. The Department received information from the applicant that better describes the location of the authorized points of diversion for Certificate 9045 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	44 E	WM	24	SE NE	1090 FEET NORTH AND 390 FEET WEST FROM THE E1/4 CORNER OF SECTION 24

16. Transfer Application T-13459 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	44 E	WM	33	SW SW	2.8

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

Certificate: 9046 in the name of ALDER SLOPE DITCH COMPANY (perfected under Permit S-6724)

Use: SUPPLEMENTAL IRRIGATION of 2.8 ACRES

Priority Date: MARCH 12, 1925

Rate: 0.04 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 acre, or its equivalent in case of rotation.

Source: WALLOWA RIVER, a tributary of GRANDE RONDE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
2 S	44 E	WM	24	SE NE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	44 E	WM	5	NE NE	1.3
2 S	44 E	WM	5	SE NE	1.5
Total					2.8

18. The Department received information from the applicant that better describes the location of the authorized points of diversion for Certificate 9046 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	44 E	WM	24	SE NE	1090 FEET NORTH AND 390 FEET WEST FROM THE E1/4 CORNER OF SECTION 24

19. Transfer Application T-13459 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	44 E	WM	33	SW SW	2.8

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

Certificate: 9311 in the name of DOBBIN DITCH COMPANY (perfected under Permit S-2696)
Use: DOMESTIC and SUPPLEMENTAL IRRIGATION of 15.8 ACRES
Priority Date: JULY 20, 1915
Rate: 0.13 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 in case of rotation.
Source: EAGLE CAP RESERVOIR in WALLOWA LAKE

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
3 S	45 E	WM	5	NW NW

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	45 E	WM	29	NE SW	10.0
2 S	45 E	WM	29	NW SW	5.8
Total					15.8

21. The Department received information from the applicant that better describes the location of the authorized points of diversion for Certificate 9311 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	45 E	WM	5	NW NW	POD 1 - 940 FEET SOUTH AND 1500 FEET EAST FROM THE NW CORNER OF SECTION 5

22. Transfer Application T-13459 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	44 E	WM	32	SE SE	2.6
1 S	44 E	WM	33	SW SW	13.2
Total					15.8

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

Certificate: 48403 in the name of ALDER SLOPE DITCH COMPANY (confirmed by WALLOWA RIVER)
Use: IRRIGATION of 5.0 ACRES and DOMESTIC
Priority Date: 4:00 P.M., NOVEMBER 30, 1901

Limit/Duty: Shall not exceed 1.5 acre feet per acre during any period of 30 days prior to July 31st of each year, and thereafter not to exceed 1 acre foot per acre during the entire remainder of the irrigation season.

Source: HURRICANE CREEK, a tributary of WALLOWA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	44 E	WM	3	NE NE	ALDER SLOPE DITCH - SOUTH 76 DEGREES 02 MINUTES WEST, 49 FEET FROM THE NE CORNER OF SECTION 3

Authorized Place of Use:

IRRIGATION – TRACT NO. 18						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
2 S	44 E	WM	5	NE NE	1	1.3
2 S	44 E	WM	5	SE NE		3.7
Total						5.0

24. Transfer Application T-13459 proposes to change the place of use of the right to:

IRRIGATION – TRACT NO. 18					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	44 E	WM	33	SW SW	5.0

25. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is currently equipped with an appropriate fish screening and/or by-pass device.

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

- 26. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
- 27. A diversion structure and ditch 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-13459.
- 28. The proposed changes would not result in enlargement of the rights.
- 29. The proposed changes would not result in injury to other water rights.
- 30. All other application requirements are met.

Conclusions of Law

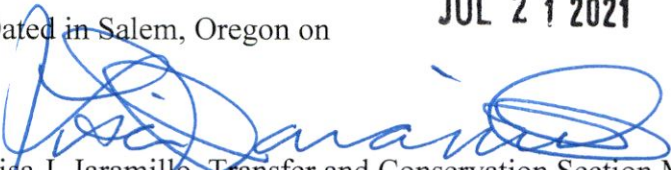
The change in point of diversion and change in places of use proposed in Transfer Application T-13459 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of diversion and change in place of use proposed in Transfer Application T-13459 are 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 Certificates 7716, 9045, 9046, 9311, and 48403 and any related decree.
3. Water right Certificates 7716, 9045, 9046, 9311, and 48403 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.
4. The quantity of water, as authorized by Certificate 7716, diverted at the new point of diversion (Lower Alder Slope), shall not exceed the quantity of water lawfully available at the original points of diversion (Dam and Big Bend Ditch).
5. Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.
6. The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.
7. The former place of use of the transferred rights shall no longer receive water under the rights.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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 changes and full beneficial use of the water.

9. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated in Salem, Oregon on **JUL 21 2021**


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

Mailing date: **JUL 22 2021**