

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING AN
T-12931, Grant County)	EMERGENCY USE DROUGHT
)	TEMPORARY CHANGE IN PLACE OF
)	USE AND CHANGE IN POINT OF
)	DIVERSION

Authority

Oregon Revised Statute (ORS) 536.750 establishes the process in which a water right holder may submit a request to temporarily transfer the use, place of use or point of diversion of water in the event of a declaration of drought, without complying with the notice and waiting requirements under ORS 540.520. Oregon Administrative Rule (OAR) Chapter 690, Division 019 implements the statutes and provides the Department's procedures and criteria for evaluating drought transfer applications.

Applicant

GORDON AND JULIE LARSON
24335 HWY 395 SOUTH
CANYON CITY, OR 97820

Findings of Fact

1. On May 23, 2018, GORDON AND JULIE LARSON filed an application to temporarily change the place of use and change the points of diversion under Certificates 7692, 17372, and 25341 for the remainder of the 2018 irrigation season or the term of the Governor's declared drought, whichever is shorter. The Department assigned the application number T-12931.
2. Notice of the application for transfer was published on May 29, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The issues of injury and enlargement from the watermaster's review are outlined below:
 - a. After the proposed change, the watermaster concluded that distribution of water rights could result in regulation of other water rights that would not have occurred if use under the original rights were maximized under the full quantity authorized. It is not clear if the reach between the old POD and the new POD gains or loses water.

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.

Pumping water at the new PODs that was not available at the existing PODs could result in additional water diverted from the system and could result in regulation of other users not previously regulated.

- b. It is likely the original place of use could continue to receive water from the same source. The irrigation system installed for this transfer can potentially be operated to blend water from Berry Creek and Canyon Creek to all lands involved. The John Day decree does not delineate which source serves which portions of the place of use. The State Engineer's Map for the John Day Decree does show how the original delivery system worked and what acreage was served by each source and diversion.
- c. The State Engineer's Map does not identify a location for the domestic use under Certificate 25341. The John Day River Adjudication Proof of Claims has no discussions or clarifying information about the domestic use source. The watermaster requested the caseworker for this transfer to request information and proof of the domestic water use from the applicant.

4. The first right to be temporarily transferred is as follows:

Certificate: 7692 in the name of BUD HINTON (perfected under Permit S-8025)
Use: SUPPLEMENTAL IRRIGATION of 5.7 ACRES
Priority Date: JUNE 24, 1927
Rate: 0.08 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: CANYON CREEK, tributary of JOHN DAY RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
15 S	31 E	WM	1	NW NW

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	31 E	WM	36	SW SW	5.7

5. Temporary Transfer Application T-12981 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	31 E	WM	36	SW NW	5.7

6. A change in points of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-12931 proposes to move the authorized point of diversion approximately 3100 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	31 E	WM	35	SE NE	CANYON CREEK PUMP – 140 FEET NORTH AND 190 FEET WEST FROM THE E1/4 CORNER OF SECTION 35

7. The second right to be temporarily transferred is as follows:

Certificate: 17372 in the name of JESS T. ILER (perfected under Permit S-18205)
Use: IRRIGATION of 1.8 ACRES
Priority Date: MARCH 8, 1948
Rate: 0.045 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right exiting for the same lands, shall be limited to ONE-FORTIETH of one cubic foot per second per acre, for each acre irrigated prior to June 1st and thereafter ONE-EIGHTIETH of one cubic foot per second or its equivalent for each acre irrigated and shall be limited to a diversion of not to exceed 1.0 acre-foot per acre for each acre irrigated during any month prior to June 1st and shall be further limited to a total diversion of not to exceed 4.0 acre feet per acre for each acre irrigated during the irrigation season from April 1st to September 30th of each year.
Source: CANYON CREEK, tributary of JOHN DAY RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
14 S	31 E	WM	36	SW SW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	31 E	WM	36	NW SW	1.0
14 S	31 E	WM	36	SW SW	0.8
TOTAL					1.8

8. Certificate 17372 describes the authorized place of use as 1.0 acres in the NWSW and 0.8 acres in the SWSW of Section 36, Township 14 S, Range 31 E, Willamette Meridian, Grant County, Oregon.
- The transfer application depicts the place of use under Certificate 17372 as being 1.8 acres in the NWSW of Section 36, Township 14 S, Range 31 E, Willamette Meridian, Grant County, Oregon.
 - The final proof survey indicates the basis for locating the irrigated lands was a fence intersection described on the map with "said to be cor." Review of historic aerial photos depicts what is likely the fence intersection referenced to be well north of any PLS corner. Also, the overall shape of the irrigated field as depicted in the Final Proof Survey does not match the topographical characteristics of the land.

When the field is shifted to the north by aligning the mapped fence intersection with the historic fence intersection depicted on the aerial photo, the final proof survey better matches the terrain and the irrigation system. Based on the review of aerial photos, historic maps, LiDAR data, and the resurvey performed by the county surveyor in 2015, the department concluded the right should be re-described as being 1.8 acres in the NWSW of Section 36, Township 14 S, Range 31 E, Willamette Meridian, Grant County, Oregon.

The following table lists the place of use as described in existing certificate 17372 and a proposed re-description based on the above findings:

Twp	Rng	Sec	Original Description of Place of Use		Proposed Re-Description of Place of Use		
			Q-Q	Acres	Q-Q	Acres	Current Tax Lot [optional]
14 S	31 E	36	NW SW	1.0	NW SW	1.8	5315
14 S	31 E	36	SW SW	0.8			
TOTAL				1.8			

9. Temporary Transfer Application T-12981 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	31 E	WM	36	SW NW	1.8

10. A change in points of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-12931 proposes to move the authorized point of diversion approximately 3100 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	31 E	WM	35	SE NE	CANYON CREEK PUMP – 140 FEET NORTH AND 190 FEET WEST FROM THE E1/4 CORNER OF SECTION 35

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

Certificate: 25341 in the name of BUD HINTON, SUCCESSOR IN INTEREST TO MARY HALL (confirmed by John Day River (F))

Use: IRRIGATION, DOMESTIC, AND STOCK OF 47.8 ACRES

Priority Date: JULY 3, 1883

Rate: 1.20 CUBIC FEET PER SECOND

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said irrigation, and shall not exceed ONE-FORTIETH cubic foot per second per acre irrigated to June 1 and ONE-EIGHTIETH cubic foot per second per acre thereafter; further limited to 1.0 acre-foot per calendar month to June 1 and 4.0 acre-feet per acre during season April 1 to September 30, measured at the point of diversion.

Source: BERRY CREEK, tributary to CANYON CREEK, and CANYON CREEK

Authorized Place of Use:

IRRIGATION, DOMESTIC, AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	31 E	WM	36	SW NW	23.3
14 S	31 E	WM	36	NW SW	18.8
14 S	31 E	WM	36	SW SW	5.7
TOTAL					47.8

12. Certificate 25341 does not describe the location of the authorized points of diversion, however, information is available from the adjudication map and the CWRE's survey indicating that the authorized points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Ditch Name
14 S	31 E	WM	36	NW SE	UPPER BERRY CREEK
14 S	31 E	WM	36	NE SW	MIDDLE BERRY CREEK
14 S	31 E	WM	36	NW SW	LOWER BERRY CREEK
15 S	31 E	WM	1	NW NW	CANYON CREEK

13. Certificate 25341 lists both Berry Creek and Canyon Creek as sources for this right. The water right certificate and the tabulation in the decree do not depict the number acres that are irrigated from each source. However, the adjudication map does provide the approximate acreage that was historically irrigated from each source.

14. Temporary Transfer Application T-12981 proposes to temporarily change the place of use of the right to:

IRRIGATION AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	31 E	WM	36	SW NW	24.7
14 S	31 E	WM	36	NE SW	0.1
14 S	31 E	WM	36	NW SW	14.8
14 S	31 E	WM	36	SW SW	7.3
14 S	31 E	WM	35	SE NE	0.4
14 S	31 E	WM	35	NE SE	0.5
TOTAL					47.8

DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	31 E	WM	36	NW SW	

15. A change in points of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-12931 proposes to move the authorized point of diversion approximately a 1/4 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	31 E	WM	35	SE NE	BERRY CREEK PUMP – 140 FEET NORTH AND 170 FEET WEST FROM THE E1/4 CORNER OF SECTION 35
14 S	31 E	WM	35	SE NE	CANYON CREEK PUMP – 140 FEET NORTH AND 190 FEET WEST FROM THE E1/4 CORNER OF SECTION 35

Temporary Drought Transfer Review Criteria

16. 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.
17. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing water rights were present within the five-year period prior to submittal of Transfer Application T-12931.
18. The Governor issued an executive order on April 10, 2018, declaring a state of drought emergency in Grant County due to drought and extreme weather conditions, which is still in effect and the water right proposed for transfer is on lands included in the area covered by the drought order.
19. The proposed changes would result in enlargement of the rights. Water right certificate 25341 and the John Day River decree do not distinguish the acreages to be served by each of the sources. Diverting more water from one source than what was historically used to irrigate the entire place of use would be an enlargement of the water right.
20. The proposed changes could result in injury to other water rights. Diverting more water from one source than what was originally allowed could be injurious to water right certificates 25340, 65150, and T-6410.
21. All other application requirements are met.

Conclusions of Law

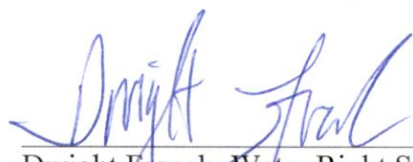
The temporary changes in place of use and points of diversion proposed in Temporary Drought Transfer Application T-12931 are consistent with the requirements of ORS 536.750 and OAR 690-019-0055.

Now, therefore, it is ORDERED:

1. The temporary changes in places of use and points of diversion proposed in Temporary Drought Transfer Application T-12931 are approved.
2. The former places of use **shall not** be irrigated as part of these water rights during the remainder of the 2018 irrigation season or until the end of the Governor's declared drought, whichever occurs first.
3. The approval of this temporary drought transfer may be revoked or modified if the Department finds the changes causes injury to any existing water right.
4. The use of water at the temporary places of use authorized by this transfer shall be in accordance with the terms and conditions of Certificates 7692, 17372, and 25341. The use shall revert to the authorized place of use at the end of the 2018 irrigation season.

5. The proposed changes in place of use and points of diversion shall revert to the authorized places of use and points of diversion at the end of the 2018 irrigation season or the end of the Governor's declared drought, whichever occurs first.
6. The use of the remaining water right described by Certificate 25341 shall continue to be in accordance with the terms and conditions of Certificate 25341.
7. The quantity of water diverted at the new points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.
8. The maximum amount of water to be diverted from Berry Creek will be at a rate of 1.13 cfs up to June 1st and 0.6 cfs to September 30th. The maximum amount of water to be diverted from Canyon Creek will be at a rate of 0.12 cfs up to June 1st and 0.06 cfs to September 30th.
9. To protect Canyon Creek water users, the watermaster staff must have access to the original points of diversion to compare the amount of water that is available at the original points of diversion with what is being diverted from the proposed points of diversion. If access is restricted, a measuring device capable of continuous measurement and recording with telemetry may be required at the Berry Creek #2 point of diversion. The landowner will be notified by the Department prior to accessing the property. The landowner will provide the necessary information to access the property through the locked gates.
10. 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 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.
11. Watermaster office staff shall have unrestricted access during the irrigation season to the respective measuring devices at the proposed points of diversion.

Dated at Salem, Oregon, JUN 01 2018.



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

Mailing Date: JUN 01 2018