

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

| | | |
|---------------------------------------|---|-----------------------------------|
| In the Matter of Transfer Application |) | FINAL ORDER APPROVING |
| T-14135, Deschutes County |) | A DISTRICT PERMANENT TRANSFER FOR |
| |) | PLACE OF USE |

Authority

Oregon Revised Statutes (ORS) 540.570 to 540.580 establishes the process in which a district may submit a request to transfer a water right within district boundaries. Oregon Administrative Rule (OAR) Chapter 690, Division 385 implements the statutes and provides the Department's procedures and criteria for evaluating district transfer applications.

Applicant

TUMALO IRRIGATION DISTRICT
64697 COOK AVE
BEND, OR 97703

Findings of Fact

1. On December 29, 2022, TUMALO IRRIGATION DISTRICT (TID) filed a district transfer application to permanently change the place of use under Certificates 95175, 95176, 95177, 95178, 74149, and 79719. The Department assigned the application number T-14135.
2. Notice of the District Permanent Transfer Application was published on January 10, 2023, pursuant to ORS 540.580 and OAR 690-385-4400. No comments were filed in response to the notices.
3. On February 7, 2023, TID modified the application to include an additional supplemental water right certificate.

This final order in a contested case and 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(2) 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.

Within 20 days after this final order is issued (i.e., mailing date), the district or any protestant may file with the commission exceptions to the final order. The commission shall issue an order granting or denying the exceptions within 30 days after receiving the exceptions. ORS 540.580(10).

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

Certificate: 95175 in the name of TUMALO IRRIGATION DISTRICT (confirmed by decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 11.54 acres

Priority Dates: AUGUST 5, 1900, SEPTEMBER 1900 and MAY 27, 1907

Rate & 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-SEVENTIETH of one cubic foot per second (or its equivalent) and 1.8 acre-feet, measured at or within one-half mile of the land to be irrigated, for each acre irrigated during the irrigation season of each year.

Source: TUMALO CREEK, tributary of the DESCHUTES RIVER

Authorized Points of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|---|
| 17 S | 11 E | WM | 23 | SW NE | TUMALO FEED CANAL POD 1: NORTH 70° 21' WEST, 1550 FEET FROM THE EAST ¼ CORNER OF SECTION 23 |
| 18 S | 10 E | WM | 2 | NW SW | TUMALO CREEK POD 2: NORTH 14° 02' EAST, 1713 FEET FROM THE SOUTH ¼ CORNER OF SECTION 2 |

Authorized Place of Use:

| IRRIGATION | | | | | | | | | |
|--------------|------|------|-----|-----|-------|--------------|---------|------------|---------|
| Priority | Twp | Rng | Mer | Sec | Q-Q | Acres | Tax Lot | Water User | Notice |
| 9/1900 | 16 S | 11 E | WM | 27 | SW SE | 1.14 | 502 | KINGERY | 22.002 |
| 8/5/1900 | 17 S | 11 E | WM | 11 | SE NW | 1.20 | 600 | DUGAN | 22.003 |
| 9/1900 | 17 S | 11 E | WM | 11 | SE NW | 0.20 | 600 | DUGAN | 22.003* |
| 9/1900 | 17 S | 11 E | WM | 13 | NW SE | 9.00 | 100 | ERMK LLC | 22.001* |
| Total | | | | | | 11.54 | | | |

*Lands for primary irrigation formerly under Certificate 76106

5. Transfer Application T-14135 proposes to change the place of use to:

Proposed Place of Use:

| IRRIGATION | | | | | | | | | |
|--------------|------|------|-----|-----|-------|--------------|---------|-------------------------|---------|
| Priority | Twp | Rng | Mer | Sec | Q-Q | Acres | Tax Lot | Water User | Notice |
| 9/1900 | 16 S | 11 E | WM | 27 | SW SE | 1.14 | 502 | KINGERY | 22.002 |
| 8/5/1900 | 17 S | 11 E | WM | 11 | SE NW | 1.20 | 600 | DUGAN | 22.003 |
| 9/1900 | 17 S | 11 E | WM | 11 | SE NW | 0.20 | 600 | DUGAN | 22.003* |
| 9/1900 | 17 S | 11 E | WM | 12 | NW SW | 9.00 | 900 | MCCLAIN REVOCABLE TRUST | 22.001* |
| Total | | | | | | 11.54 | | | |

*Lands formerly under Certificate 76106

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

Certificate: 95176 in the name of TUMALO IRRIGATION DISTRICT (perfected under Permit S-19628)

Use: IRRIGATION of 1.65 acres; SUPPLEMENTAL IRRIGATION of 2.34 acres

Priority Date: OCTOBER 29, 1913

Maximum Quantity (Rate) that can be applied to an acre at the diversion:

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands is limited as follows:

Apr 1 to May 1 and Oct 1 to Nov 1: 1/80 cfs

May 1 to May 15 and Sep 15 to Oct 1: 1/60 cfs

May 15 to Sep 15: 1/32.4 cfs

Maximum Duty that can be applied to an acre at the diversion during a season:

Not to exceed 9.91 acre-feet (af) per acre per year.

Sources: TUMALO CREEK, CRATER CREEK, LITTLE CRATER CREEK AND THREE SPRINGS BRANCHES, tributaries of the DESCHUTES RIVER.

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|---|
| 17 S | 11 E | WM | 23 | SW NE | TUMALO FEED CANAL POD 1: NORTH 70° 21' WEST, 1550 FEET FROM THE EAST ¼ CORNER OF SECTION 23 |

Authorized Place of Use:

| IRRIGATION | | | | | | | | |
|--------------|------|-----|-----|-------|-------------|---------|------------|--------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Tax Lot | Water User | Notice |
| 16 S | 11 E | WM | 25 | NE SW | 1.25 | 911 | LAHEY | 22.004 |
| 16 S | 11 E | WM | 25 | NW SE | 0.40 | 911 | LAHEY | 22.004 |
| Total | | | | | 1.65 | | | |

| SUPPLEMENTAL IRRIGATION | | | | | | | | |
|-------------------------|------|-----|-----|-------|-------------|---------|------------|--------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Tax Lot | Water User | Notice |
| 16 S | 11 E | WM | 27 | SW SE | 1.14 | 502 | KINGERY | 22.002 |
| 17 S | 11 E | WM | 11 | SE NW | 1.20 | 600 | DUGAN | 22.003 |
| Total | | | | | 2.34 | | | |

7. Transfer Application T-14135 proposes to change the place of use to:

Proposed Place of Use:

| IRRIGATION | | | | | | | | |
|---------------|------|-----|-----|-------|-------------|---------|------------|--------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Tax Lot | Water User | Notice |
| 16 S | 11 E | WM | 25 | NE SW | 0.60 | 913 | LAHEY | 22.004 |
| 16 S | 11 E | WM | 25 | NW SE | 1.05 | 913 | LAHEY | 22.004 |
| Total: | | | | | 1.65 | | | |

| SUPPLEMENTAL IRRIGATION | | | | | | | | |
|-------------------------|------|-----|-----|-------|-------------|---------|------------|--------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Tax Lot | Water User | Notice |
| 16 S | 11 E | WM | 27 | SW SE | 1.14 | 502 | KINGERY | 22.002 |
| 17 S | 11 E | WM | 11 | SE NW | 1.20 | 600 | DUGAN | 22.003 |
| Total | | | | | 2.34 | | | |

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

Certificate: 95177 in the name of TUMALO IRRIGATION DISTRICT (perfected under Permit S-624)

Use: SUPPLEMENTAL IRRIGATION of 13.19 acres

Priority Date: APRIL 7, 1911

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 the following amounts measured at the point of diversion from the Deschutes River for each acre irrigated during the periods indicated below during the irrigation season of each year.

Apr 1 to May 1 and Oct 1 to Nov 1: 0.75 acre-feet

May 1 to May 15 and Sep 15 to Oct 1: 0.50 acre-feet

May 15 to Sep 15: 7.40 acre-feet

Further limited to a total diversion of not to exceed 35,000 acre-feet stored water only during any one irrigation season.

Source: CRESCENT LAKE RESERVOIR, constructed under Permit R-102, a tributary of CRESCENT CREEK

Authorized Points of Diversion:

| Twp | Rng | Mer | Sec | Q-Q |
|------|-----|-----|-----|-------|
| 24 S | 6 E | WM | 11 | SE SW |
| 24S | 6 E | WM | 11 | SW SE |

Authorized Place of Use:

| SUPPLEMENTAL IRRIGATION | | | | | | | | |
|-------------------------|------|-----|-----|-------|--------------|---------|------------|---------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Tax Lot | Water User | Notice |
| 16 S | 11 E | WM | 25 | NE SW | 1.25 | 911 | LAHEY | 22.004 |
| 16 S | 11 E | WM | 25 | NW SE | 0.40 | 911 | LAHEY | 22.004 |
| 16 S | 11 E | WM | 27 | SW SE | 1.14 | 502 | KINGERY | 22.002 |
| 17 S | 11 E | WM | 11 | SE NW | 1.20 | 600 | DUGAN | 22.003 |
| 17 S | 11 E | WM | 11 | SE NW | 0.20 | 600 | DUGAN | 22.003* |
| 17 S | 11 E | WM | 13 | NW SE | 9.00 | 100 | ERMK LLC | 22.001* |
| Total | | | | | 13.19 | | | |

*Lands for supplemental irrigation formerly described under Certificate 76106

9. Transfer Application T-14135 proposes to change the place of use to:

Proposed Place of Use:

| SUPPLEMENTAL IRRIGATION | | | | | | | | |
|-------------------------|------|-----|-----|-------|--------------|---------|-------------------------|---------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Tax Lot | Water User | Notice |
| 16 S | 11 E | WM | 25 | NE SW | 0.60 | 913 | LAHEY | 22.004 |
| 16 S | 11 E | WM | 25 | NW SE | 1.05 | 913 | LAHEY | 22.004 |
| 16 S | 11 E | WM | 27 | SW SE | 1.14 | 502 | KINGERY | 22.002 |
| 17 S | 11 E | WM | 11 | SE NW | 1.20 | 600 | DUGAN | 22.003 |
| 17 S | 11 E | WM | 11 | SE NW | 0.20 | 600 | DUGAN | 22.003* |
| 17 S | 11 E | WM | 12 | NW SW | 9.00 | 900 | MCCLAIN REVOCABLE TRUST | 22.001* |
| Total | | | | | 13.19 | | | |

*Lands formerly described under Certificate 76106

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

Certificate: 95178 in the name of TUMALO IRRIGATION DISTRICT (perfected under Permit S-27841)

Use: SUPPLEMENTAL IRRIGATION of 13.19 acres

Priority Date: DECEMBER 8, 1961

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 not to exceed 9.91 acre-feet per acre for each acre irrigated during the irrigation season of each year and the right allowed hereunder for the appropriation of water for lands having a valid prior right shall be limited to the amount necessary to make up any deficiency in water available to said lands under said prior right and the amount allowed herein, together with the amount secured under any other right existing for said lands, shall be limited by the duty of water as fixed herein; and shall be subject to such reasonable rotation system as may be ordered by the proper state officer.

Source: CRESCENT LAKE RESERVOIR (constructed under Permit R-2744), tributary of CRESCENT CREEK and the LITTLE DESCHUTES RIVER, tributary to the DESCHUTES RIVER

Authorized Points of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|--|
| 17 S | 12 E | WM | 32 | NW NE | TUMALO ID BEND FEED CANAL: 2050 FEET WEST FROM THE NE CORNER OF SECTION 23 |
| 24 S | 6 E | WM | 11 | SE SW | CRESCENT LAKE RESERVOIR – NONE GIVEN |

Authorized Place of Use:

| SUPPLEMENTAL IRRIGATION | | | | | | | | |
|-------------------------|------|-----|-----|-------|-------|---------|------------|--------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Tax Lot | Water User | Notice |
| 16 S | 11 E | WM | 25 | NE SW | 1.25 | 911 | LAHEY | 22.004 |
| 16 S | 11 E | WM | 25 | NW SE | 0.40 | 911 | LAHEY | 22.004 |
| 16 S | 11 E | WM | 27 | SW SE | 1.14 | 502 | KINGERY | 22.002 |

| SUPPLEMENTAL IRRIGATION | | | | | | | | |
|-------------------------|------|-----|-----|-------|--------------|---------|------------|---------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Tax Lot | Water User | Notice |
| 17 S | 11 E | WM | 11 | SE NW | 1.20 | 600 | DUGAN | 22.003 |
| 17 S | 11 E | WM | 11 | SE NW | 0.20 | 600 | DUGAN | 22.003* |
| 17 S | 11 E | WM | 13 | NW SE | 9.00 | 100 | ERMK LLC | 22.001* |
| Total | | | | | 13.19 | | | |

11. Transfer Application T-14135 proposes to change the place of use to:

Proposed Place of Use:

| SUPPLEMENTAL IRRIGATION | | | | | | | | |
|-------------------------|------|-----|-----|-------|--------------|---------|-------------------------|---------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Tax Lot | Water User | Notice |
| 16 S | 11 E | WM | 25 | NE SW | 0.60 | 913 | LAHEY | 22.004 |
| 16 S | 11 E | WM | 25 | NW SE | 1.05 | 913 | LAHEY | 22.004 |
| 16 S | 11 E | WM | 27 | SW SE | 1.14 | 502 | KINGERY | 22.002 |
| 17 S | 11 E | WM | 11 | SE NW | 1.20 | 600 | DUGAN | 22.003 |
| 17 S | 11 E | WM | 11 | SE NW | 0.20 | 600 | DUGAN | 22.003* |
| 17 S | 11 E | WM | 12 | NW SW | 9.00 | 900 | MCCLAIN REVOCABLE TRUST | 22.001* |
| Total | | | | | 13.19 | | | |

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

Certificate: 74149 in the name of TUMALO IRRIGATION DISTRICT (confirmed by decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: SUPPLEMENTAL IRRIGATION of 13.19 acres

Priority Date: 1905

Limit/Duty: The use is limited to the amount beneficially used and shall not exceed 9.50 cubic feet per second for supplemental irrigation, industrial use and pond maintenance during the irrigation season from April 1 to November 1 and storage of said water in Crescent Lake Reservoir during the non-irrigation season, or its equivalent in case of rotation, measured at the point of diversion from the source.

Source: The DESCHUTES RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|---|
| 17 S | 12 E | WM | 32 | NW NE | BEND FEED CANAL: 100 FEET SOUTH AND 550 FEET EAST FROM THE N ¼ CORNER OF SECTION 32 |

Authorized Place of Use:

| SUPPLEMENTAL IRRIGATION | | | | | | | | |
|-------------------------|------|-----|-----|-------|-------|---------|------------|---------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Tax Lot | Water User | Notice |
| 16 S | 11 E | WM | 25 | NE SW | 1.25 | 911 | LAHEY | 22.004 |
| 16 S | 11 E | WM | 25 | NW SE | 0.40 | 911 | LAHEY | 22.004 |
| 16 S | 11 E | WM | 27 | SW SE | 1.14 | 502 | KINGERY | 22.002 |
| 17 S | 11 E | WM | 11 | SE NW | 1.20 | 600 | DUGAN | 22.003 |
| 17 S | 11 E | WM | 11 | SE NW | 0.20 | 600 | DUGAN | 22.003* |

| SUPPLEMENTAL IRRIGATION | | | | | | | | |
|-------------------------|------|-----|-----|-------|--------------|---------|------------|---------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Tax Lot | Water User | Notice |
| 17 S | 11 E | WM | 13 | NW SE | 9.00 | 100 | ERMK LLC | 22.001* |
| Total | | | | | 13.19 | | | |

13. Transfer Application T-14135 proposes to change the place of use to:

Proposed Place of Use:

| SUPPLEMENTAL IRRIGATION | | | | | | | | |
|-------------------------|------|-----|-----|-------|--------------|---------|-------------------------|---------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Tax Lot | Water User | Notice |
| 16 S | 11 E | WM | 25 | NE SW | 0.60 | 913 | LAHEY | 22.004 |
| 16 S | 11 E | WM | 25 | NW SE | 1.05 | 913 | LAHEY | 22.004 |
| 16 S | 11 E | WM | 27 | SW SE | 1.14 | 502 | KINGERY | 22.002 |
| 17 S | 11 E | WM | 11 | SE NW | 1.20 | 600 | DUGAN | 22.003 |
| 17 S | 11 E | WM | 11 | SE NW | 0.20 | 600 | DUGAN | 22.003* |
| 17 S | 11 E | WM | 12 | NW SW | 9.00 | 900 | MCCLAIN REVOCABLE TRUST | 22.001* |
| Total | | | | | 13.19 | | | |

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

Certificate: 79719 in the name of JULIA KENNEDY (perfected under Permit G-13107)

Use: SUPPLEMENTAL IRRIGATION of 1.14 acres

Priority Date: OCTOBER 24, 1995

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 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. This right is limited to any deficiency in the available supply of any prior right existing for the same land.

Source: A WELL WITHIN THE DESCHUTES RIVER BASIN

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|--|
| 16 S | 11 E | WM | 27 | SW SE | 850 FEET NORTH AND 250 FEET EAST FROM THE SOUTH 1/4 CORNER OF SECTION 27 |

Authorized Place of Use:

| SUPPLEMENTAL IRRIGATION | | | | | | | | |
|-------------------------|------|-----|-----|-------|-------|---------|------------|--------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Tax Lot | Water User | Notice |
| 16 S | 11 E | WM | 27 | SW SE | 1.14 | 502 | KINGERY | 22.002 |

15. Transfer Application T-14135 proposes to change the place of use to:

Proposed Place of Use:

| SUPPLEMENTAL IRRIGATION | | | | | | | | |
|-------------------------|------|-----|-----|-------|-------|---------|------------|--------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Tax Lot | Water User | Notice |
| 16 S | 11 E | WM | 27 | SW SE | 1.14 | 502 | KINGERY | 22.002 |

16. The Department finds that the district permanent transfer application was submitted according to ORS 540.580 and OAR 690-385-4000, contains the information required under OARs 690-385-4200 and 690-385-2000, and includes maps meeting the requirements of OARs 690-385-4300 and 690-385-2200.
17. The Department finds that the proposed district permanent transfer meets all the criteria set forth in ORS 540.580 and OAR 690-385-4000.
18. The water right is subject to transfer as defined in OAR 690-385-0100(17).
19. The proposed change in places of use will not result in enlargement of the right as defined in OAR 690-385-0100(4).
20. The proposed change in place of use will not result in injury to other water rights as defined in OAR 690-385-0100(6).
21. Any other applicable requirements for district permanent water right transfers are met as required in OAR 690-385-4500.

Conclusions of Law

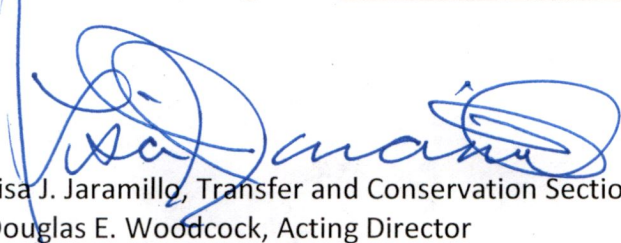
The proposed changes in place of use as proposed in Transfer Application T-14135 comply with and satisfy the requirements of ORS 540.580 and OAR 690-385-4500.

Now, therefore, it is ORDERED:

1. The proposed changes in place of use to the water rights evidenced by Certificates 95175, 95176, 95177, 95178, 74149, and 79719 are approved.
2. The places of use from which the water rights are transferred off by Transfer T-14135 shall no longer be irrigated, and are cancelled from Certificates 95175, 95176, 95177, 95178, and 74149.
3. Water right Certificate 79719 is cancelled. Certificate 96910 will be issued describing that portion of the right NOT modified by this transfer.
4. The right to the use of the water at the places of use NOT modified by this order is restricted to beneficial and is subject to all other conditions and limitations contained in Certificates 95175, 95176, 95177, 95178, and 74149 and any related decree.
5. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.

6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. A Claim of Beneficial Use shall be submitted by TID to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
7. Water right Certificates 95175, 95176, 95177, 95178, and 74149 are modified. After satisfactory proof of completion has been determined by the Department, superseding water right certificates will be issued when the Department determines it is necessary for record keeping.
8. After satisfactory proof of beneficial use has been received, a new certificate confirming the right transferred from Certificate 79719 will be issued.

Dated in Salem, Oregon on FEB 16 2023


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Douglas E. Woodcock, Acting Director
Oregon Water Resources Department

Mailing Date: FEB 17 2023