

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-13116, Lane County)	ADDITIONAL POINTS OF
)	DIVERSION AND PARTIAL
)	CANCELLATION OF A WATER
)	RIGHT CERTIFICATE

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

WALKER AND JENNY SIRNIO, ET. AL.
35056 MATTHEWS RD
EUGENE, OR 97405

Findings of Fact

1. On January 30, 2019, WALKER AND JENNY SIRNIO, ET. AL. filed an application for additional points of appropriation under Certificate 46210. The Department assigned the application number T-13116.
2. Notice of the application for transfer was published on February 5, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

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.

3. On June 30, 2020, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of deficiencies in the application. The application did not include all of the signatures from all of the applicants, and there were issues regarding mapping and identification of the acres, involved with the changes requested in T-13116. The Department requested that the deficiencies be resolved by August 14, 2020.
4. On July 27, 2020, the Department received a revised application and map, and affidavits of Consent by Deeded Landowner, identifying the other applicants. The Department also received affidavits for the voluntary cancellation of a portion of water right Certificate 46210, from Christopher J. Curtis and Christine M. Curtis, Samuel Joseph Harris and Carolyn Ann Harris, Scott A. Russi and Michelle G. Russi, Walker Sirmio and Jenny Sirmio, and David F. Whittaker and Misty M. Whittaker.
5. On August 7, 2020 the Department determined upon further review of the revisions and affidavits received on July 27, 2020, still did not satisfy the deficiencies. The acres being affected by the change in T-13116 equals 7.5 acres, which would leave a remaining right of 1.0 acre, being 0.11 acre in the NE NE of Section 30, and 0.89 acre in the SE NE of Section 30. The affidavits are proposing to cancel a total of 1.0 acre in the SE NE, which exceeds the remaining right in that section.
6. On August 18, 2020, the agent submitted a revised Table 2, and on August 21, 2020, the agent submitted a revised application map, correctly identifying the portions of the place of use that are abandoned and being voluntarily cancelled.
7. On September 24, 2020, the applicant submitted revised affidavits, as identified in Finding of Fact 4 above, resolving the deficiencies.
8. On October 8, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-13116 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of November 9, 2020, for the applicants to respond.
9. On November 12, 2020, the applicants took part in an online meeting with the Department and the Oregon Department of Fish and Wildlife, to discuss the denial of T-13116, and the options available.
10. On November 13, 2020, the Department determined a revised draft Preliminary Determination should be issued, as Certificate 46210 is for irrigation March 1 through October 31. The instream water right, Certificate 75625, has a season of use from November to March. The only overlap in period of use is in March, and water availability shows a net of 413.0 cubic feet per second (cfs) available in March, whereas Certificate 75625 is limited to not more than 200.0 cfs.
11. On December 10, 2020, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-13116 to the applicants. The revised draft Preliminary Determination cover letter set forth a deadline of January 11, 2021, for the applicants to respond. The applicants requested that the Department proceed with

issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

12. On March 18, 2021, the Department issued a Preliminary Determination proposing to approve Transfer T-13116 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 March 23, 2021, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

13. The right to be transferred is as follows:

Certificate: 46210 in the name of DONALD B. MCCARTY (perfected under Permit S-39275)
Use: IRRIGATION of 7.3 ACRES
Priority Date: JULY 3, 1974
Rate: 0.09 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 for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.
Source: COAST FORK WILLAMETTE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
18 S	2 W	WM	30	SE NE	82	POD 1 (EXISTING) - 890 FEET NORTH AND 600 FEET WEST FROM THE E1/4 CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
18 S	2 W	WM	30	NE NE	82	0.51
18 S	2 W	WM	30	SE NE	82	6.79
Total						7.30

14. Transfer Application T-13116 proposes additional points of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original point of diversion in feet (ft.)
18 S	2 W	WM	30	SE NE	POD 2 - 1025 FEET NORTH AND 520 FEET WEST FROM THE E1/4 CORNER OF SECTION 30	348.0 ft. downstream
18 S	2 W	WM	30	SE NE	POD 3 - 650 FEET NORTH AND 750 FEET WEST FROM THE E1/4 CORNER OF SECTION 30	397.4 ft. upstream

15. 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 not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

16. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
17. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-13116.
18. The proposed change would not result in enlargement of the right.
19. The proposed change would not result in injury to other water rights.
20. On November 13, 2020, the Department determined that instream water right Certificate 75625 would not be injured due to the upstream additional point of diversion. Certificate 75625, which provides required stream flow for migration, spawning, egg incubation, fry emergence, and juvenile rearing, is not in effect April through the middle of November, and the minimum stream flow requirement is met in the month of March. Therefore, the additional point of diversion upstream would not injure Certificate 75625 during the irrigation season, being March 1 through October 1. The Department has determined a revised draft Preliminary Determination should be issued to correct the Department's findings and determinations.
21. All other application requirements are met.

Partial Cancellation of a Water Right

22. On September 24, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Christopher J. Curtis and Christine M. Curtis. The right to be cancelled is as follows:

Certificate: 46210 in the name of DONALD B. MCCARTY (perfected under Permit S-39275)
Use: IRRIGATION of 0.18 ACRE
Priority Date: JULY 3, 1974
Rate: 0.002 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 for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5

acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: COAST FORK WILLAMETTE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
18 S	2 W	WM	30	SE NE	82	POD 1 (EXISTING) - 890 FEET NORTH AND 600 FEET WEST FROM THE E1/4 CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q - Q	DLC	Tax Lot	Acres
18 S	2 W	WM	30	SE NE	82	300	0.18

22. On September 24, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Samuel Joseph Harris and Carolyn Ann Harris. The right to be cancelled is as follows:

Certificate: 46210 in the name of DONALD B. MCCARTY (perfected under Permit S-39275)

Use: IRRIGATION of 0.23 ACRE

Priority Date: JULY 3, 1974

Rate: 0.003 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-eighth 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: COAST FORK WILLAMETTE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
18 S	2 W	WM	30	SE NE	82	POD 1 (EXISTING) - 890 FEET NORTH AND 600 FEET WEST FROM THE E1/4 CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q - Q	DLC	Tax Lot	Acres
18 S	2 W	WM	30	SE NE	82	400	0.23

23. On September 24, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Scott A. Russi and Michelle G. Russi. The right to be cancelled is as follows:

Certificate: 46210 in the name of DONALD B. MCCARTY (perfected under Permit S-39275)

Use: IRRIGATION of 0.26 ACRE

Priority Date: JULY 3, 1974

Rate: 0.003 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 for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: COAST FORK WILLAMETTE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
18 S	2 W	WM	30	SE NE	82	POD 1 (EXISTING) - 890 FEET NORTH AND 600 FEET WEST FROM THE E1/4 CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q - Q	DLC	Tax Lot	Acres
18 S	2 W	WM	30	SE NE	82	500	0.26

24. On September 24, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Walker Sirnio and Jenny Sirnio. The right to be cancelled is as follows:

Certificate: 46210 in the name of DONALD B. MCCARTY (perfected under Permit S-39275)

Use: IRRIGATION of 0.14 ACRE

Priority Date: JULY 3, 1974

Rate: 0.002 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 for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: COAST FORK WILLAMETTE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
18 S	2 W	WM	30	SE NE	82	POD 1 (EXISTING) - 890 FEET NORTH AND 600 FEET WEST FROM THE E1/4 CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q - Q	DLC	Tax Lot	Acres
18 S	2 W	WM	30	SE NE	82	200	0.01
18 S	2 W	WM	30	SE NE	82	200	0.13
Total							0.14

25. On September 24, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from David F. Whittaker and Misty M. Whittaker. The right to be cancelled is as follows:

Certificate: 46210 in the name of DONALD B. MCCARTY (perfected under Permit S-39275)
Use: IRRIGATION of 0.39 ACRE
Priority Date: JULY 3, 1974
Rate: 0.005 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-eighthieth 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: COAST FORK WILLAMETTE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
18 S	2 W	WM	30	SE NE	82	POD 1 (EXISTING) - 890 FEET NORTH AND 600 FEET WEST FROM THE E1/4 CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q - Q	DLC	Tax Lot	Acres
18 S	2 W	WM	30	SE NE	82	100	0.08
18 S	2 W	WM	30	SE NE	82	100	0.31
						Total	0.39

Conclusions of Law

The additional points of diversion proposed in Transfer Application T-13116 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

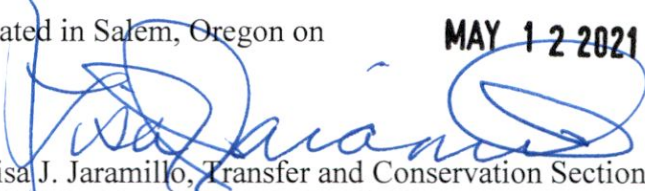
Now, therefore, it is ORDERED:

1. The additional points of diversion proposed in Transfer Application T-13116 are approved. The portions of the right that has been abandoned are cancelled.
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 Certificate 46210 and any related decree.
3. Water right Certificate 46210 is cancelled.
4. The quantity of water diverted at the new additional points of diversion (POD 2 and 3), together with that diverted at the original point of diversion (POD 1 (Existing)), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 1 (Existing)).

5. 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.
6. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
7. 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 change and full beneficial use of the water.
8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on

MAY 12 2021


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

Mailing date: _____

MAY 13 2021