

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

In the Matter of Transfer Application)	FINAL ORDER CORRECTING
T-12059, Josephine County)	TEMPORARY CHANGES IN PLACE
)	OF USE AND AN ADDITIONAL
)	POINT OF DIVERSION

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

PADRE PROPERTIES LLC
PO BOX 1032
HUGHSON, CA 95326

Findings of Fact

1. On May 14, 2015, Padre Properties LLC and Steven A. and Deirdre A. Farrow filed an application to temporarily change the place of use and an additional point of diversion to serve the proposed place of use under Certificates 49704 and 7145 for a period of 5 years. The Department assigned the application number T-12059.
2. Notice of the application for transfer was published on May 19, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 15, 2015, the Final Order Approving Transfer Application T-12059 was issued by the Department as evidenced by Special Order Volume 96, Page 218, following issuance scrivener's errors were identified in the proposed place of use under certificate 49704, and in the description of the second right as a portion of certificate 7145, which is transferred in its entirety. This order is issued to correct these two errors. Corrections where possible will appear in bold and italic.

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.

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

Certificate: 49704 in the name of W.H. WISECARVER (confirmed by Sucker Creek Decree Vol. 1 Page 253)
Use: IRRIGATION of 17.6 ACRES
Priority Date: 1889, 1908
Rate: 0.33 CUBIC FOOT PER SECOND (CFS) 0.29 CFS for Tract 1 and 0.04 CFS for Tract 2
Period of Use: April 1 to October 31
Source: SUCKER CREEK tributary to the EAST FORK ILLINOIS RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	7 W	WM	22	NW SE	1300 FEET SOUTH AND 200 FEET EAST FROM THE CENTER OF SECTION 22

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 W	WM	27	NW NW	8.0
39 S	7 W	WM	27	NW NW	3.1
39 S	7 W	WM	28	NE NE	6.5
Total					17.6

5. Temporary Transfer Application T-12059 proposes to temporarily change the place of use (POU) of the right for some of the acres and to and the point of diversion (POD) for all of the acres as described below:

IRRIGATION						Type of Change/ Acres	
Twp	Rng	Mer	Sec	Q-Q	Tax lot	POU and POD	POD only
39 S	7 W	WM	22	SW SW	700	3.00	
39 S	7 W	WM	22	SE SW	700	1.17	
39 S	7 W	WM	27	NW NW	301		6.50
39 S	7 W	WM	27	NW NW	301		3.10
39 S	7 W	WM	27	NW NW	301	1.50	
39 S	7 W	WM	28	NE NE	101	2.33	
Sub totals						8.0	9.6
Total						17.6	

6. An additional point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-12059 proposes an additional point of diversion approximately 0.3 mile downstream from the authorized point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	7 W	WM	22	NE SW	1430 FEET NORTH AND 25 FEET WEST FROM THE SE CORNER OF THE SW1/4 OF SECTION 22

7. The second right to be temporarily transferred is as follows:
Certificate: 7145 in the name of JOHN MCDOUGALL (confirmed by Sucker Creek Decree Vol. 1 Page 253)
Use: IRRIGATION of 25 ACRES
Priority Date: 1880, 1905
Rate: 0.50 CUBIC FOOT PER SECOND (CFS) 0.20 CFS for 10 acres and 0.30 CFS for 15 acres
Period of Use: April 1 to October 31
Source: SUCKER CREEK tributary to the EAST FORK ILLINOIS RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 W	WM	22	SW SW	25.0

8. Certificate 7145 does not describe the authorized point of diversion, however, the applicant provided a description of the authorized point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	7 W	WM	22	NW SE	MCDOUGALL DITCH: 1300 FEET SOUTH AND 200 FEET EAST FROM THE CENTER OF SECTION 22

9. Temporary Transfer Application T-12059 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax lot	Acres
39 S	7 W	WM	22	SW SW	700	10.0
39 S	7 W	WM	22	SE SW	700	15.0

10. An additional point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-12059 proposes an additional point of diversion approximately 0.30 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	7 W	WM	22	NW SE	1430 FEET NORTH AND 25 FEET WEST FROM THE SE CORNER OF THE SW1/4 OF SECTION 22

Temporary Transfer Review Criteria

11. 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.
12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
13. The proposed changes would not result in enlargement of the rights.

14. The proposed changes 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.

Conclusions of Law


The temporary changes in place of use and the additional point of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-12059 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The temporary changes in place of use and the additional point of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-12059 are approved.
2. The former place of use **shall not** be irrigated as part of these water rights during the 2015, 2016, 2017, 2018 and 2019 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2019 irrigation season. The authorization to use the additional point of diversion shall be terminated concurrently.
4. The approval of this temporary transfer may be revoked or modified if the Department finds the changes cause injury to any existing water right.
5. A subsequent application for permanent transfer of Certificates 49704 and 7145 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 Certificates 49704 and 7145.
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 point of appropriation 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.

9. The water user shall submit a soil moisture monitoring plan to the Department. The plan shall include the use of high frequency dielectric probe data (or better soil moisture monitoring technology) at select monitoring sites to provide assurance to the Department that water is not moving beyond the boundary of the water right. The water user shall receive approval of the plan from the Department before water use may begin.
10. The location and number of soil moisture monitoring sites shall be selected so as to effectively monitor the behavior of the wetted areas located within different slope and/or soil types in the proposed place of use.
11. A control soil measurement site shall be selected that receives only natural moisture from the atmosphere, and does not receive direct irrigation water nor irrigation water runoff.
12. Soil moisture monitoring and flow data shall be made available to the Watermaster promptly upon request. The water user shall submit an annual report of water use and soil moisture monitoring data to the Department. The monitoring data shall be reported in a reasonable summary format.
13. If water use by the drip irrigation system delivers water to non-irrigated areas outside the designated circles, the Watermaster may regulate the water use until soil moisture and flow data demonstrate that the non-irrigated areas are not receiving irrigation water.
14. The use of the remaining water rights described by Certificate **49704** shall continue to be in accordance with the terms and conditions of Certificate **49704**.

Dated at Salem, Oregon this 8 day of July, 2015.



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

Mailing Date: JUL 09 2015