

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

| | | |
|---------------------------------------|---|-----------------------------|
| In the Matter of Transfer Application |) | FINAL ORDER APPROVING AN |
| T-12084, Lane County |) | EMERGENCY USE DROUGHT |
| |) | TEMPORARY CHANGE IN |
| |) | CHARACTER OF USE, 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

Delta Sand and Gravel Company
Stan Pickett, President and General Manager
999 Division Ave
Eugene, OR 97404

Findings of Fact

1. On June 16, 2015, Delta Sand and Gravel Company filed an application to temporarily change the character of use, the place of use and point of diversion under Certificates 23793 and 31596 for the remainder of the 2015 irrigation season or the term of the Governor's declared drought, whichever is shorter. The Department assigned the application number T-12084.
2. Notice of the application for transfer was published on June 23, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The first right to be temporarily transferred is as follows:
Certificate: 23793 in the name of LLOYD F. and IRETA A. WHITEAKER; TRUMAN A. and LOLA L. CHASE (perfected under Permit S-22592)
Use: IRRIGATION of 39.6 ACRES
Priority Date: AUGUST 7, 1953

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.

Rate: 0.50 CUBIC FOOT PER SECOND (cfs)
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: MIDDLE FORK WILLAMETTE RIVER a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC |
|------|-----|-----|-----|-------|-------------------|
| 18 S | 2 W | WM | 4 | SW SE | P. Gordon DLC #62 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 18 S | 2 W | WM | 4 | NE SW | 62 | 17.2 |
| 18 S | 2 W | WM | 4 | SE SW | 62 | 2.0 |
| 18 S | 2 W | WM | 4 | NW SE | 47 | 5.6 |
| 18 S | 2 W | WM | 4 | NW SE | 62 | 6.8 |
| 18 S | 2 W | WM | 4 | SW SE | 47 | 4.0 |
| 18 S | 2 W | WM | 4 | SW SE | 62 | 4.0 |

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

Certificate: 31596 in the name of LLOYD F. WHITEAKER & TRUMAN A. CHASE (perfected under Permit S-25380)
Use: IRRIGATION of 20.4 ACRES
Priority Date: MARCH 7, 1958
Rate: 0.26 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: MIDDLE FORK WILLAMETTE RIVER a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC |
|------|-----|-----|-----|-------|---------------|
| 18 S | 2 W | WM | 4 | SW SE | Gordon DLC 62 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 18 S | 2 W | WM | 4 | NE SW | 62 | 12.8 |
| 18 S | 2 W | WM | 4 | SE SW | 62 | 5.2 |
| 18 S | 2 W | WM | 4 | SW SE | 47 | 2.4 |

5. The certificates do not describe the measured distances of the points of diversion, however information is available from the applicant indicating that the point of diversion is the same for both certificates and is further described as follows:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|------|-----|-----|-----|-------|-----|---|
| 18 S | 2 W | WM | 4 | SW SE | 62 | 560 FEET NORTH AND 1570 FEET WEST FROM THE SE CORNER OF SECTION 4 |

6. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Drought Transfer Application T-12084 proposes to move the authorized point of diversion approximately 175.3 river miles downstream to:

| Twp | Rng | Mer | Sec | Q-Q | GLot | Measured Distances |
|------|-----|-----|-----|-------|------|---|
| 17 S | 3 W | WM | 18 | NW NW | 4 | 400 FEET SOUTH AND 630 FEET EAST FROM THE NW CORNER OF SECTION 18 |

7. Temporary Drought Transfer Application T-12084 proposes to temporarily change the place of use of both rights to:

| INDUSTRIAL/MANUFACTURING | | | | | | |
|--------------------------|-----|-----|-----|-------|------|-----|
| Twp | Rng | Mer | Sec | Q-Q | GLot | DLC |
| 17 S | 3 W | WM | 6 | SW NW | 6 | |
| 17 S | 3 W | WM | 6 | NW SW | 13 | |
| 17 S | 3 W | WM | 6 | SW SW | 14 | |
| 17 S | 3 W | WM | 7 | NW NW | | |
| 17 S | 3 W | WM | 7 | SW NW | 3 | |
| 17 S | 3 W | WM | 7 | NW SW | | |
| 17 S | 3 W | WM | 7 | SW SW | 4 | |
| 17 S | 3 W | WM | 18 | NW NW | 4 | |
| 17 S | 4 W | WM | 1 | NE NE | | 53 |
| 17 S | 4 W | WM | 1 | NW NE | | 53 |
| 17 S | 4 W | WM | 1 | SW NE | | 53 |
| 17 S | 4 W | WM | 1 | SE NE | | 53 |
| 17 S | 4 W | WM | 1 | NE SE | | 53 |
| 17 S | 4 W | WM | 12 | SW NE | 2 | |
| 17 S | 4 W | WM | 12 | SW NE | 11 | |
| 17 S | 4 W | WM | 12 | SE NE | 1 | |
| 17 S | 4 W | WM | 12 | SE NE | 12 | |
| 17 S | 4 W | WM | 12 | NE SE | 8 | |
| 17 S | 4 W | WM | 12 | NW SE | 6 | |
| 17 S | 4 W | WM | 12 | NW SE | 9 | |
| 17 S | 4 W | WM | 12 | SW SE | 6 | |
| 17 S | 4 W | WM | 12 | SW SE | | 48 |
| 17 S | 4 W | WM | 12 | SE SE | 7 | |
| 17 S | 4 W | WM | 12 | SE SE | 13 | |
| 17 S | 4 W | WM | 13 | NE NE | 13 | |
| 17 S | 4 W | WM | 13 | NE NE | | 48 |
| 17 S | 4 W | WM | 13 | NW NE | | 48 |

8. Temporary Drought Transfer Application T-12084 proposes to change the character of use to Industrial/Manufacturing.

Temporary Drought Transfer Review Criteria

- 9. 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.
- 10. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
- 11. The Governor issued an executive order on May 21, 2015, declaring a state of drought emergency in Lane 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.
- 12. The proposed changes would not result in enlargement of the rights.
- 13. 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 OAR 690-019-055(3) if injury to existing water rights is shown and cannot be mitigated to the satisfaction of the Director and injured parties.

Conclusions of Law

The temporary changes in character of use, place of use, and point of diversion proposed in Temporary Drought Transfer Application T-12084 are consistent with the requirements of ORS 536.750 and OAR 690-019-0055.

Now, therefore, it is ORDERED:


- 1. The temporary changes in character of use, place of use, and point of diversion proposed in Temporary Drought Transfer Application T-12084 are approved.
- 2. The amount of water used for the proposed industrial/manufacturing use shall be limited to a total of 0.76 cfs and shall not exceed 150.0 af (further limited by certificate), during the irrigation season (March 1 to October 31) or until the end of the Governor’s declared drought, whichever occurs first.

| Certificate | Rate (cfs) | Volume (af) |
|-------------|------------|-------------|
| 23793 | 0.50 | 99.0 |
| 31596 | 0.26 | 51.0 |
| Total: | 0.76 | 150.0 |

- 3. The former places of use **shall not** be irrigated as part of these water rights during the remainder of the 2015 irrigation season or until the end of the Governor’s declared drought, whichever occurs first.
- 4. The approval of this temporary drought transfer may be revoked or modified if the Department finds the changes cause injury to any existing water right.

5. 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 23793 and 31596. The use shall revert to the authorized places of use at the end of the 2015 irrigation season.
6. The approval of this temporary transfer may be revoked or modified if the Department finds the changes cause injury to any existing water right.
7. The proposed changes in character of use, place of use, and point of diversion shall revert to the authorized character of use, places of use, and point of diversion at the end of the 2015 irrigation season or the end of the Governor's declared drought, whichever occurs first.
8. The use of the remaining water rights described by Certificates 23793 and 31596 shall continue to be in accordance with the terms and conditions of Certificates 23793 and 31596.

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