

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

In the Matter of Transfer Application)	FINAL ORDER DENYING AN
T-12913, Klamath County)	EMERGENCY USE DROUGHT
)	TEMPORARY CHANGE IN PLACE OF
)	USE AND CHANGE IN POINT OF
)	APPROPRIATION

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

PARKS HICKEY
ATTN: JESSE HICKEY
P.O. BOX 1022
MERRILL, OR 97633

Findings of Fact

1. On May 2, 2018, PARKS HICKEY, ATTN: JESSE HICKEY, filed an application to temporarily change the place of use and change the point of appropriation to serve the proposed place of use for certificate 57079 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-12913.
2. Notice of the application for transfer was published on May 8, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 31, 2018, the Department contacted the applicant by telephone and on July 12, 2018 by written correspondence to notify the applicant of the deficiencies in the application. The Department requested that the deficiencies be resolved by August 12, 2018. No response was received to the letter.

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 right to be temporarily transferred is as follows:

Certificate: 57079 in the name of JOSEPH C. FOTHERINGHAM; WALTER W. FOTHERINGHAM (perfected under Permit G-6123)
Use: IRRIGATION of 24.8 ACRES
Priority Date: APRIL 26, 1974
Rate: 0.31 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 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: WELL #3 in the LOST RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	10 E	WM	4	SW SW	1280 FEET NORTH AND 1230 FEET EAST FROM THE SW CORNER OF SECTION 4

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	10 E	WM	4	SE SW	24.8

5. Temporary Transfer Application T-12913 proposes to temporarily change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	10 E	WM	4	SE SW	24.8

6. A change in point of appropriation is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-12913 proposes to move the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	10 E	WM	9	NE SW	NO INFORMATION PROVIDED

Temporary Drought Transfer Review Criteria

7. Water has been used within the last five years according to the terms and conditions of the right. There is no evidence available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
8. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
9. The Governor issued an executive order on March 13, 2018, declaring a state of drought emergency in Klamath 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.

10. Insufficient information was submitted such that the Department cannot make a determination that the proposed changes would not enlarge the water right.
11. Insufficient information was submitted such that the Department cannot make a determination that the proposed changes would not injure other water rights.
12. No information was submitted to show that the applicant is authorized to make the changes proposed in Temporary Drought Transfer Application T-12913.


Conclusions of Law

The temporary change in place of use and point of appropriation proposed in Temporary Drought Transfer Application T-12913 are not consistent with the requirements of ORS 536.750 and OAR 690-019-0055.

Now, therefore, it is ORDERED:

1. The temporary change in place of use and point of appropriation proposed in Temporary Drought Transfer Application T-12913 is denied

Dated at Salem, Oregon this OCT 10 2018



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

Mailing Date: OCT 11 2018