

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING AN
T-13732, Jackson County)	EMERGENCY USE DROUGHT TEMPORARY
)	CHANGE IN PLACES OF USE

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

MEDICINAL PROPERTIES LLC
263 REITEN DRIVE
ASHLAND, OR 97520

Findings of Fact

1. On June 10, 2021, MEDICINAL PROPERTIES LLC filed an application to temporarily change the place of use under Certificates 75420, 80406, and 80407 for the remainder of the 2021 irrigation season or the term of the Governor’s declared drought, whichever is shorter. The Department assigned the application number T-13732.
2. Notice of the application for transfer was published on June 15, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 17, 2021, the Department contacted the applicant by written correspondence to notify the applicant and the applicant’s agent of deficiencies in the application. The Table 2 “FROM” lands under Certificate 80407 did not match the map, and the “TO” lands under Certificate 80407 were not clearly identified on the map. The Department requested that the deficiencies be resolved by July 19, 2021.
4. On June 18, 2021, the applicant’s agent submitted a revised map and Table 2, resolving the deficiencies.

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.

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

Certificate: 75420 in the name of DAN R. KEWISH (confirmed by ROGUE RIVER (F) STATE WATER BOARD Decree)
Use: IRRIGATION of 4.4 ACRES
Priority Date: 1881
Rate: 0.07 CUBIC FOOT PER SECOND
Source: EVANS CREEK, a tributary of the ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	4 W	WM	11	SE NE	1150 FEET NORTH AND 20 FEET WEST FROM THE E1/4 CORNER OF SECTION 11

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	4 W	WM	12	SW NW	4.3
35 S	4 W	WM	12	SE NW	0.1
Total					4.4

6. Temporary Transfer Application T-13732 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	4 W	WM	12	NE NW	0.1
35 S	4 W	WM	12	SW NW	1.4
35 S	4 W	WM	12	SE NW	2.9
Total					4.4

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

Certificate: 80406 in the name of DAN R. KEWISH (confirmed by ROGUE RIVER (F)(S) MODIFIED, 1964 Decree)
Use: IRRIGATION of 10.4 ACRES
Priority Date: 1881
Rate: 0.173 CUBIC FOOT PER SECOND (IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION DESCRIBED AS THE FIELDER AND HILLS DITCH – NW 1/4 NW 1/4, SECTION 7, TOWNSHIP 35 SOUTH, RANGE 3 WEST, W.M.; 475 FEET SOUTH AND 120 FEET EAST FROM THE NW CORNER OF SECTION 7)
Source: EVANS CREEK, a tributary of ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	4 W	WM	12	SW NW	1185 FEET NORTH AND 30 FEET EAST FROM THE W1/4 CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	4 W	WM	11	SE NE	4.1
35 S	4 W	WM	12	SW NW	1.4
35 S	4 W	WM	12	SE NW	4.9
Total					10.4

8. Temporary Transfer Application T-13732 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	4 W	WM	12	NE NW	4.6
35 S	4 W	WM	12	NW NW	0.7
35 S	4 W	WM	12	SW NW	2.3
35 S	4 W	WM	12	SE NW	2.8
Total					10.4

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

Certificate: 80407 in the name of DAN R. KEWISH (perfected under Permit S-19543)

Use: IRRIGATION of 13.5 ACRES

Priority Date: JUNE 5, 1950

Rate: 0.17 CUBIC FOOT PER SECOND (IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION DESCRIBED AS THE FIELDER AND HILLS DITCH – NW 1/4 NW 1/4, SECTION 7, TOWNSHIP 35 SOUTH, RANGE 3 WEST, W.M.; 475 FEET SOUTH AND 120 FEET EAST FROM THE NW CORNER OF SECTION 7)

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 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year from April 2 to October 31 of each year.

Period of Use: APRIL 2 TO OCTOBER 31

Source: EVANS CREEK, a tributary of ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	4 W	WM	12	SW NW	1185 FEET NORTH AND 30 FEET EAST FROM THE W1/4 CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	4 W	WM	12	NE NW	3.5
35 S	4 W	WM	12	NW NW	0.7
35 S	4 W	WM	12	SW NW	3.7

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	4 W	WM	12	SE NW	5.6
Total					13.5

10. Temporary Transfer Application T-13732 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	4 W	WM	11	SE NE	4.1
35 S	4 W	WM	12	SW NW	5.6
35 S	4 W	WM	12	SE NW	3.8
Total					13.5

Temporary Drought 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 Governor issued an executive order on April 13, 2021, declaring a state of drought emergency in Jackson 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.
14. The proposed changes would not result in enlargement of the rights.
15. 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 change in places of use proposed in Temporary Drought Transfer Application T-13732 is consistent with the requirements of ORS 536.750 and OAR 690-019-0055.

Now, therefore, it is ORDERED:

1. The temporary change in places of use proposed in Temporary Drought Transfer Application T-13732 is approved.
2. The former places of use **shall not** be irrigated as part of these water rights during the remainder of the 2021 irrigation season or until the end of the Governor’s declared drought, whichever occurs first.

3. The approval of this temporary drought transfer may be revoked or modified if the Department finds the change causes injury to any existing water right.
4. 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 75420, 80406, and 80407. The use shall revert to the authorized place of use at the end of the 2021 irrigation season.
5. The proposed change in places of use shall revert to the authorized places of use at the end of the 2021 irrigation season or the end of the Governor's declared drought, whichever occurs first.
6. 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.
 - 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.
7. The use of the remaining water rights described by Certificates 75420, 80406, and 80407 shall continue to be in accordance with the terms and conditions of Certificates 75420, 80406, and 80407.

Dated in Salem, Oregon on **SEP 24 2021**


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

Mailing Date: **SEP 27 2021**