

**BEFORE THE WATER RESOURCES DEPARTMENT
OF
STATE OF OREGON

COUNTY OF UMATILLA**

In the Matter of a Proposed Change) ORDER APPROVING A
In Place of Use of Water Within an) TEMPORARY DISTRICT TRANSFER
Irrigation District — TRANSFER 9727)

FINDINGS OF FACT

1. Pursuant to ORS 540.570, WESTLAND IRRIGATION DISTRICT, P.O. Box 944, Hermiston, OR, 97838, petitioned the Oregon Water Resources Department to temporarily change the place of use of water within the boundaries of the irrigation district. The petition was originally received on May 14, 2004, and included the required fees.
2. The Department assigned the petition transfer application number T-9727.
3. The Department published notice of receipt of the petition in the Department’s Weekly Notice dated May 24, 2004. The petition was noticed as a temporary transfer within irrigation district boundaries.
4. No comments or timely protests were received in response to the published notice.
5. The proposed change in place of use will result in injury to other water rights. However, the use of water can be conditioned to avoid injury to other water rights.
6. The duty of water associated with the authorized place of use (“FROM” lands) equals 6.0 acre-feet per acre per season. Limiting the use of water at the proposed place of use (“TO” lands) to a duty of 3.0 acre-feet per acre per season avoids injury to other water rights and mitigates changes to return flow.
7. The applicant’s agent submitted a statement accepting the condition limiting the duty of water on the “TO” lands to 3.0 acre-feet per acre per season.
8. The following rights are proposed to be modified:

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW
This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must filed within the 60 day time period specified by ORS 183.484(2).

Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

a) **IRRIGATION** (IR)

Certificate 76717: issued in the name of Westland Irrigation District

Priority Date: July 1907

Rate & Duty: 1/80 cfs (or its equivalent) from MARCH 1 TO NOVEMBER 1 and subject to the limitations of Paragraph 32 of the Umatilla River decree

Source: Umatilla River, tributary to the Columbia River

Point of Diversion: SW¼ NE¼, Section 21, T 3 N, R 29 E, W.M.; WESTLAND CANAL - North 76 Degrees 45 Minutes 56 Seconds East, 2913.19 Feet from the West ¼ Corner of Section 21.

b) **SUPPLEMENTAL IRRIGATION** (IR(S))

Certificate 79439: issued in the name Bureau of Reclamation

Priority Date: July 1, 1924

Rate & Duty: 1/80 cfs and 3.0 AF per acre irrigated

Source: McKay Reservoir

Point of Diversion: NW¼ SE¼, Section 34, T 2 N, R 32 E, W.M..

9. Westland Irrigation District petitioned to temporarily change the place of use from the locations identified in Table 1 to the locations listed in Table 2.

| TABLE 1 - "FROM" LANDS | | | | | | |
|------------------------|-----|-----|-------|---------|-------------------|-------------------|
| | | | | | ACRES | |
| | | | | | IR | IR(S) |
| TWP | RNG | SEC | ¼ ¼ | Tax Lot | Certificate 76717 | Certificate 79439 |
| 4N | 28E | 7 | SE SW | 1000 | 23.50 | 23.50 |
| TOTAL | | | | | 23.50 | 23.50 |

| TABLE 2 - "TO" LANDS | | | | | | |
|----------------------|-----|-----|-------|---------|-------------------|-------------------|
| | | | | | ACRES | |
| | | | | | IR(S)* | IR(S) |
| TWP | RNG | SEC | ¼ ¼ | Tax Lot | Certificate 76717 | Certificate 79439 |
| 3N | 27E | 2 | SW SE | 4600 | 23.50 | 23.50 |
| TOTAL | | | | | 23.50 | 23.50 |

* Note: The District requests to TEMPORARILY diminish (change the character of use) for Certificate 76717 on the "TO" lands to supplemental irrigation for the existing primary Columbia River Permit 51017.

7. The District also proposes to modify the following right:

IRRIGATION (IR)

Certificate 76799: issued in the name of Westland Irrigation District

Priority Date: April 12, 1961

Rate & Duty: 1/40 cfs and 4.5 AF per acre irrigated

Source: Umatilla River and McKay Reservoir

Point of Diversion: SW¼ NE¼, Section 21, T 3 N, R 29 E, W.M.; WESTLAND CANAL - North 76 Degrees 45 Minutes 56 Seconds East, 2913.19 Feet from the

West ¼ Corner of Section 21; McKay Dam - NW¼ SE¼, Section 34, T 2 N, R 32 E, W.M..

8. Westland Irrigation District petitioned to temporarily change the place of use from the locations identified in Table 3 to the locations listed in Table 4.

| TABLE 3 - "FROM" LANDS | | | | | ACRES |
|------------------------|-----|-----|-------|---------|-------------------|
| | | | | | IR |
| TWP | RNG | SEC | ¼ ¼ | Tax Lot | Certificate 76799 |
| 4N | 28E | 7 | SE SW | 1000 | 3.40 |
| TOTAL | | | | | 3.40 |

| TABLE 4 - "TO" LANDS | | | | | ACRES |
|----------------------|-----|-----|-------|---------|--------------------|
| | | | | | IR(S) |
| TWP | RNG | SEC | ¼ ¼ | Tax Lot | Certificate 76799* |
| 3N | 27E | 2 | SW SE | 4600 | 3.40 |
| TOTAL | | | | | 3.40 |

* Note: The District requests to TEMPORARILY diminish (change the character of use) for Certificate 76717 on the "TO" lands to supplemental irrigation for the existing primary Columbia River Permit 51017.

The right to use water for the above purposes is restricted to beneficial use on the lands or place of use described and is subject to all other conditions and limitations described by permit or certificate. The use also shall conform to any reasonable rotation system ordered by the proper state officer.

9. Pursuant to ORS 540.574 and ORS 540.570, in reviewing the petition submitted by Westland Irrigation District, the Department has determined the following:
- a) The petition contains the information required under ORS 540.574(3).
 - b) The petition meets the requirements of ORS 540.570.
 - c) The petition contains maps which are satisfactory to the Department and which the District certified as being accurate.
 - d) The petition includes the required statement from the District that it has on file, and available for review, written authorization from each landowner affected by the transfer.
 - e) The rate, duty, and total number of acres proposed for transfer do not exceed that of the water right subject to transfer.
 - f) The use authorized by the water right subject to transfer will not change; and
 - g) The proposed change in place of use will result in injury to other water rights. However, to avoid injury to other water rights, the use of water on the "TO" lands has been conditioned to mitigate changes to return flow.
 - h)

CONCLUSIONS OF LAW

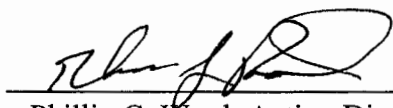
1. The petition submitted by Westland Irrigation District proposing temporary changes in place of use within district boundaries includes the information, and satisfies the criteria, required by ORS 540.574(3).
2. The proposed transfer, conditioned to avoid injury, complies with the requirements of ORS 540.570.
3. Pursuant to ORS 540.570(2), a district may temporarily diminish a primary right to supplemental.
4. The petition satisfies the criteria and requirements of ORS 540.574(3) and ORS 540.570, and as conditioned, results in no injury to other water rights.

ORDER

It is hereby ORDERED :

1. The proposed temporary changes to the water rights evidenced by Water Right Certificates 76717, 79439, and 76799 may be made for the 2004 irrigation season provided the following conditions are met by the water user:
 - a) The "FROM" lands shall receive no water under the rights involved with this transfer for the 2004 irrigation season.
 - b) The use of water under the rights involved with this transfer on both the "TO" and "FROM" lands during the 2004 irrigation season or calendar year is prohibited and may subject both the district and landowner to civil penalties. The use of water on the "TO" lands is limited to a duty of water not exceed 3.0 acre-feet per acre per season.
 - c) All restrictions and limitations contained in the subject rights shall apply to the "TO" lands.
 - d) Pursuant to 540.570 (5), the approval of this temporary transfer may be conditioned, rejected or revoked at any time to the extent necessary to avoid injury if the Department finds the transfer is causing injury to an existing water right.
2. Pursuant to 540.570 (6), upon expiration of the 2004 irrigation season, all uses of water for which a temporary transfer is allowed under this section shall revert automatically to the terms and conditions of the original water right permit, certificate or adjudication proceeding under ORS chapter 539 as evidenced by a court decree.

WITNESS the signature of the Water Resources Director affixed July 21, 2004.



Phillip C. Ward, Acting Director