

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-13474, Clackamas County)	CHANGE IN PLACE OF USE AND
)	PARTIAL CANCELLATION OF A
)	WATER RIGHT

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and request voluntary cancellation.

Applicant

CAL FARMS, INC.
ATTN: AMBROSE CALCAGNO
17031 S CLACKAMAS RIVER DR
OREGON CITY, OR 97045

Findings of Fact

1. On June 16, 2020, CAL FARMS, INC. filed an application for a change in place of use under Certificate 30928. The Department assigned the application number T-13474.
2. Notice of the application for transfer was published on June 30, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 30, 2020, the Department contacted the applicant's agent by written correspondence a notification deficiencies in the application. The deficiencies included incomplete Evidence of Use Affidavit and Consent by Deeded Landowner. The Department requested that the deficiencies be resolved by December 31, 2020.
4. On December 29, 2020, the Department received an amended Transfer Application map, Evidence of Use aerial image, and map and a corrected Table 2 of the transfer application.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, 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. On December 31, 2020, the Department received an evidence of use affidavit, consent by deeded landowner affidavit and an affidavit for the voluntary cancellation of a portion of a water right certificate.
6. On February 5, 2021, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13474 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 7, 2021, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
7. On February 23, 2021, the agent for the applicant requested one additional year to complete the proposed changes because of delays likely to occur due to the COVID pandemic, the time needed to install irrigation system equipment on the south side of the highway as well as uncertainty in the planting schedules for the field.
8. On April 14, 2021, the Department issued a Preliminary Determination proposing to approve Transfer Application T-13474 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on April 20, 2021, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
9. The portion of the right to be transferred is as follows:

Certificate: 30928 in the name of MRS. A. R. SMITH (perfected under Permit S-25796)

Use: IRRIGATION of 9.0 ACRES

Priority Date: SEPTEMBER 29, 1958

Rate: 0.113 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: CLACKAMAS RIVER, tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
2 S	2 E	WM	13	SW NE	5	None Given

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
2 S	2 E	WM	13	SW NE	5	0.2
2 S	2 E	WM	13	NE NW	6	8.8
					Total	9.0

10. Transfer Application T-13474 proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
2 S	2 E	WM	13	SW NE	5		1.5
2 S	2 E	WM	13	SE NW	6		3.1
2 S	2 E	WM	13	NE SE		68	0.9
2 S	2 E	WM	13	NW SE		68	3.5
						Total	9.0

Transfer Review Criteria [OAR 690-380-4010(2)]

- 11. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is 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 right was present within the five-year period prior to submittal of Transfer Application T-13474.
- 13. The proposed change, as conditioned, would not result in enlargement of the right.
- 14. The proposed change would not result in injury to other water rights.
- 15. All other application requirements are met.

Partial Cancellation of a Water Right

16. On December 31, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Colleen C. Calcagno, Trustee. The right portion of the right to be cancelled is as follows:

Certificate: 30928 in the name of MRS. A. R. SMITH (perfected under Permit S-25796)
Use: IRRIGATION of 0.3 ACRE
Priority Date: SEPTEMBER 29, 1958
Rate: 0.004 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: CLACKAMAS RIVER, tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
2 S	2 E	WM	13	SW NE	5	None Given

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
2 S	2 E	WM	13	SW NE	5	0.3

Conclusions of Law

The change in place of use proposed in Transfer Application T-13474 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right shall be cancelled.

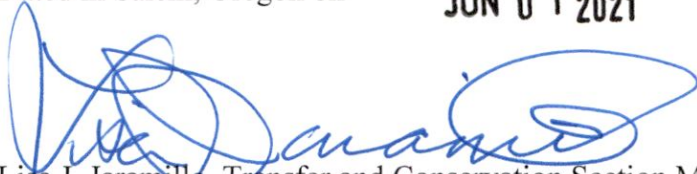
Now, therefore, it is ORDERED:

1. The change in place of use proposed in Transfer Application T-13474 is approved. The portion of the right that has been abandoned is cancelled.
2. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 30928 and any related decree.
3. Water right Certificate 30928 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.
4. 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.
5. The former place of use of the transferred right shall no longer receive water under the right.
6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.

7. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on

JUN 0 1 2021



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

Mailing date: **JUN 0 2 2021**