

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A DISTRICT
T-13562, Washington County)	PERMANENT TRANSFER, AND PARTIAL
)	CANCELLATION OF A WATER RIGHT, AND
)	PARTIAL DIMINUTION OF A WATER RIGHT
)	

Authority

Oregon Revised Statutes (ORS) 540.570 to 540.580 establish the process in which a district may submit a request to transfer a water right within district boundaries. Oregon Administrative Rule (OAR) Chapter 690, Division 385 implements the statutes and provides the Department's procedures and criteria for evaluating district 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 to voluntarily request that it be cancelled.

OAR 690-385-6000 specifies when multiple primary water rights are on the same lands that only right will be considered primary and all other rights shall be diminished to supplemental water rights.

Applicant

TUALATIN VALLEY IRRIGATION DISTRICT
2330 ELM STREET
FOREST GROVE, OR. 97116

Findings of Fact

1. On November 20, 2020, TUALATIN VALLEY IRRIGATION DISTRICT (TVID) filed a district transfer application to permanently change the place of use under Certificate 88122. The Department assigned the application number T-13562.

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.

Within 20 days after this final order is issued (i.e., mailing date), the district or any protestant may file with the commission exceptions to the final order. The commission shall issue an order granting or denying the exceptions within 30 days after receiving the exceptions. ORS 540.580(10).

2. Notice of the District Permanent Transfer Application was published on December 8, 2020, pursuant to ORS 540.580 and OAR 690-385-4400. No comments were filed in response to the notices.
3. The U.S. Bureau of Reclamation was notified of the transfer application on December 8, 2020; no comments were received within 90 days of the notification.

4. The portion of the right to be transferred is as follows:

Certificate: 88122 in the name of the U.S. Bureau of Reclamation
(Perfected under Permit S-35792)

Use: IRRIGATION of 66.3 ACRES

Priority Date: FEBRUARY 20, 1963

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 from direct flow, and shall be further limited to a diversion of not to exceed 2.5 acre-feet for each acre irrigated during the irrigation season of each year from direct flow and storage from the reservoir constructed under Permit R-5777 as evidenced by Certificate 81149; provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein and further limited to the use of stored water only on the lands described as supplemental irrigation.

Source: Scoggins Creek and Reservoir, and Gales Creek, tributaries to the Tualatin River; and the Tualatin River, a tributary of the Willamette River

Authorized Point of Diversion:

POD	Twp	Rng	Mer	Sec	Q-Q	Latitude and Longitude
SHPP	1 S	3 W	WM	8	SW SW	SPRINGHILL PUMPING PLANT (SHPP)- 45°29'32.73" N, -123° 5' 33.85"W
R-29.6	2 S	2 W	WM	9	SW NE	45°24'46.61" N, -122° 56' 20.70"W

Authorized Places of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	TaxLot	Water User
1 N	4 W	WM	14	NW SW		1.70	2500	WEYBRIGHT
1 N	4 W	WM	14	NW SW		0.80	2600	KIMBALL
1 N	4 W	WM	14	SW SW		1.10	2600	KIMBALL
1 N	4 W	WM	14	SW SW		1.70	2700	CARTY
1 N	4 W	WM	25	SW NE	40	8.30	600	VDS FARMS INC
1 N	4 W	WM	25	SW NE	53	0.30	600	VDS FARMS INC
1 N	4 W	WM	25	SE NE	40	7.70	600	VDS FARMS INC
1 N	4 W	WM	25	NE SE	40	9.90	600	VDS FARMS INC
1 N	4 W	WM	25	NW SE	40	10.70	600	VDS FARMS INC
1 S	2 W	WM	8	SE SE	43	6.90	3500	PAHLISCH
1 S	2 W	WM	17	NE NE	43	2.20	3500	PAHLISCH
1 S	4 W	WM	11	NE NE	40	0.20	1900	UNGER
1 S	4 W	WM	11	NE NE	40	0.20	2000	UNGER
1 S	4 W	WM	11	NW NE	40	1.80	1900	UNGER
1 S	4 W	WM	11	NW NE	40	1.80	2000	UNGER
1 S	4 W	WM	12	NE NW	41	11.00	500	SMITH

Twtp	Rng	Mer	Sec	Q-Q	DLC	Acres	TaxLot	Water User
Total:						66.30		

5. Transfer Application T-13562 proposes to change the places of use to:

Proposed Places of Use:

Twtp	Rng	Mer	Sec	Q-Q	DLC	Acres	TaxLot	Water User
1 N	3 W	WM	21	SW SW	64	21.20	1200	7LP LLC
1 N	3 W	WM	21	SE SW	64	15.70	1200	7LP LLC
1 N	4 W	WM	15	SE NE	51	5.30	200	GUCK
1 N	4 W	WM	24	SW NW		11.00	300	ROOFENER
1 S	3 W	WM	15	SW NW		1.40	600	GONZALES
1 S	3 W	WM	15	SE NW		2.60	600	GONZALES
2 S	2 W	WM	4	SW SW	42	9.10	700	HOFFMAN
Total:						66.30		

6. The Department finds that the district permanent transfer application was submitted according to ORS 540.580 and OAR 690-385-4000 contains the information required under OARs 690-385-4200 and 690-385-2000, and includes maps meeting the requirements of OARs 690-385-4300 and 690-385-2200.
7. The Department finds that the proposed district permanent transfer meets all the criteria set forth in ORS 540.580 and OAR 690-385-4000.
8. The water right is subject to transfer as defined in OAR 690-385-0100(17).
9. The proposed change in places of use will not result in enlargement of the right as defined in OAR 690-385-0100(4).
10. The proposed change in place of use will not result in injury to other water rights as defined in OAR 690-385-0100(6).
11. Any other applicable requirements for district permanent water right transfers are met as required in OAR 690-385-4500.

Partial Cancellation of a Water Right

12. On December 31, 2020, the Department received an affidavit from Terry Lewis, Manager, on behalf of 7LP, LLC., stating it is the owner of the lands and the appurtenant water right as evidenced by water right Certificate 34827. The affiant identified a "layered" water right on the "FROM" lands as identified in Finding of Fact #4, and does not intend to transfer this water right with the primary water right. An affidavit was submitted requesting a partial cancellation of Certificate 34827 as described below:

Certificate: 34827 in the name of Gene Lewis-Richard Peschka (perfected under Permit S-38329)

Use: IRRIGATION of 39.5 ACRES

Priority Date: AUGUST 27, 1962

Rate: 0.46 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 from direct flow 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 from direct flow and storage from reservoir constructed under Permit No. R-3143.

Source: AN UNNAMED STREAM AND RESERVOIR (constructed under Permit R-3143), tributary of DAIRY CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	DLC	Q-Q	Measured Distances
1 N	3 W	WM	21	64	SW SE	570 FEET SOUTH AND 210 FEET WEST FROM THE NE CORNER OF DLC 64

Authorized Place of Use to be Cancelled:

THE PORTION OF CERTIFICATE 34827 TO BE CANCELLED							
Twp	Rng	Mer	Sec	DLC	Q-Q	Tax Lot	Acres
1 N	3 W	WM	21	64	SW SW	1200	23.8
1 N	3 W	WM	21	64	SE SW	1200	15.7
Total:							39.5

13. The affidavit requested the cancellation of 0.5 cfs, but 39.5 acres at ONE-EIGHTIETH of one cubic foot per second per acre, is equivalent to 0.46 cfs. Therefore, only 0.46 cfs is being cancelled.

The Diminution of a Water Right

14. Certain proposed place of use parcels under Certificate 88122 will become appurtenant to portions of primary irrigation right Certificate 47029. Therefore, to avoid layering of two primary water rights for irrigation, portions of lands under this certificate will be diminished to supplemental irrigation as a result of this order.

15. On November 20, 2020, the Department received an affidavit from Jonathan Guck, as representative of himself and Crystal Guck, stating they the owners of the lands and the appurtenant water right as evidenced by water right Certificate 47029. The affiant has requested the water right for primary irrigation as described below be diminished to supplemental irrigation.

Certificate: 47029 in the name of Adelbert Evers (perfected under Permit S-36903)

Use: IRRIGATION of 5.3 ACRES

Priority Date: MAY 12, 1972

Rate: 0.07 CUBIC FOOT OF WATER 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 from direct flow 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 from direct flow and storage from reservoir constructed under Permit No. R-5991.

Source: A SMALL DRAINAGEWAY AND RESERVOIR (constructed under Permit R-5991), tributary of WEST FORK DAIRY CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	DLC	Q-Q	Measured Distances
1 N	4 W	WM	14	51	SW NW	1810 FEET SOUTH AND 10 FEET WEST FROM THE NE CORNER OF DLC 51

Authorized Place of Use to be Diminished:

Lands Diminished from Primary to Supplemental							
Twp	Rng	Mer	Sec	DLC	Q-Q	Tax Lot	Acres
1 N	4 W	WM	15	51	SE NE	200	5.3

Conclusions of Law

1. The proposed changes in place of use as proposed in Transfer Application T-13562 comply with and satisfy the requirements of ORS 540.580 and OAR 690-385-4500, and the abandoned portions of the rights should be cancelled.
2. The portion of Certificate 34827 for the use of water for irrigation as described in Finding of Fact #12, has been abandoned in accordance with the provisions of ORS 540.621 and shall be cancelled.
3. The portion of water right Certificate 47029 for the use of water for primary irrigation as described in Findings of Fact #14 is diminished to use for supplemental irrigation.


Now, therefore, it is ORDERED:

1. The proposed change in place of use to the water right evidenced by Certificate 88122 is approved.
2. The place of use from which the water right is transferred off by Transfer T-13562 shall no longer be irrigated, and is cancelled from Certificate 88122.
3. The right to the use of the water at the place of use NOT modified by this order is restricted to beneficial and is subject to all other conditions and limitations contained in Certificate 88122.
4. The district shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
5. The portion of the water right as evidenced by Certificate 34827 as requested to be canceled, is canceled. The portion of the water right as evidenced by Certificates 47029 as requested to be diminished from a right for primary irrigation to a right for supplemental irrigation are hereby diminished. Certificates 34827 and 47029 are hereby cancelled. New certificates will be issued to describe the portions of these rights NOT modified by this Final Order.

6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. A Claim of Beneficial Use shall be submitted by TVID to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
7. Water right Certificate 88122 is modified. After satisfactory proof of completion has been determined by the Department, a superseding right certificate will be issued when the Department determines it is necessary for record keeping.

MAR 3 1 2021

Dated in Salem, Oregon on _____



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

Mailing Date: **MAR 3 1 2021**