

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-13198, Benton County)	TEMPORARY CHANGE IN PLACE OF
)	USE AND AN ADDITIONAL POINT
)	OF DIVERSION

Authority

Oregon Revised Statute (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to temporarily transfer the place of use and, if necessary to convey the water to the temporary place of use, the point of diversion authorized under an existing water right.

Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

JERALD BUSH
24402 MAXFIELD CREEK RD
PHILOMATH, OR 97370

Findings of Fact

1. On June 5, 2019, JERALD BUSH filed an application to temporarily change the place of use and add an additional point of diversion to serve the proposed place of use under Certificate 76441 for a period of 5 years. The Department assigned the application number T-13198.
2. Notice of the application for transfer was published on June 18, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 1, 2019, the Department contacted the applicant's agent by written correspondence in regards to a deficiency in the application. The evidence of use supporting documentation did not match the applicant name or address. The Department requested that the deficiency be resolved by July 31, 2019.
4. On July 17, 2019, the applicant's agent submitted additional information that identified the water authorized under Certificate 76441, was used under Temporary Transfer T-12158 during 2015.

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 right to be temporarily transferred is as follows:

Certificate: 76441 in the name of GRACEN L. BUSH (perfected under Permit S-20809)
Use: IRRIGATION of 21.0 ACRES
Priority Date: OCTOBER 12, 1951
Rate: 0.26 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, 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: LUCKIAMUTE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
10 S	6 W	WM	29	SE NW	42	POD 3 - 200 FEET NORTH AND 2950 FEET EAST FROM THE NW CORNER OF WATSON DLC 40

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
10 S	6 W	WM	29	NW NE	42	8.1
10 S	6 W	WM	29	SW NE	42	12.9
Total						21.0

6. Temporary Transfer Application T-13198 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	
9 S	5 W	WM	19	NE SE	6.0	
9 S	5 W	WM	20	SW NW	2.1	
9 S	5 W	WM	20	NW SW	12.9	
Total						21.0

7. An additional point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13198 proposes to an additional point of diversion approximately 13.4 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	5 W	WM	19	SW NE	POD - 450 FEET NORTH AND 1570 FEET WEST FROM THE E1/4 CORNER OF SECTION 19

Temporary Transfer Review Criteria

8. 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.

9. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
10. The proposed changes would not result in enlargement of the right.
11. 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 ORS 540.523(5) if the Department later finds that the transfer is causing injury to any existing water right.

Conclusions of Law

The temporary change in place of use and additional point of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-13198 is consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The temporary change in place of use and additional point of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-13198 is approved.
2. The former place of use **shall not** be irrigated as part of this water right during the 2019, 2020, 2021, 2022 and 2023 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2023 irrigation season. The authorization to use the additional point of diversion shall be terminated concurrently.
4. The approval of this temporary transfer may be revoked or modified if the Department finds the changes cause injury to any existing water right.
5. A subsequent application for permanent transfer of Certificate 76441 shall be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380. Approval of this temporary transfer does not establish a precedent for approval of a subsequent application filed for a permanent transfer.
6. The use of water at the temporary place of use authorized by this transfer shall be in accordance with the terms and conditions of Certificate 76441.
7. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
8. 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 (new and existing).
 - 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.
9. The use of the remaining water right described by Certificate 76441 shall continue to be in accordance with the terms and conditions of Certificate 76441.

Dated in Salem, Oregon on

AUG 27 2019



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

Mailing Date: AUG 28 2019