

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-13408, Douglas County) A DISTRICT TEMPORARY TRANSFER

Authority

Oregon Revised Statute (ORS) 540.570 establishes the process in which a district may submit a request to temporarily 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.

Applicant

SUTHERLIN WATER CONTROL DISTRICT
495 N. STATE ST
SUTHERLIN, OR 97479

Findings of Fact

1. On April 6, 2020, Sutherlin Water Control District (SWCD) filed a district transfer application to temporarily change the places of use within the boundaries of the irrigation district under Certificates 76599 and 76600. SWCD also proposes to add a new point of diversion to facilitate the change in places of use under Certificates 76599 and 76600. The Department assigned the application number T-13408.
2. Notice of the application for transfer was published on April 14, 2020, pursuant to ORS 540.570 and OAR 690-385-3400. No comments were filed in response to the notice.
3. The portion of the first right to be temporarily transferred is as follows:
Certificate: 76599 in the name of SUTHERLIN WATER CONTROL DISTRICT (perfected under Permit S-31273)
Use: PRIMARY IRRIGATION of 29.6 ACRES
Rate: 0.37 Cubic Foot per Second
Priority Date: JANUARY 27, 1960
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

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 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.

each year from direct flow and storage. The use of water for supplemental irrigation is limited to stored water only.

Source: SUTHERLIN CREEK and PLAT I RESERVOIR (constructed under R-4751), tributary of the NORTH UMPQUA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	5 W	WM	14	NW SE	41	POD 1: 800 FEET SOUTH AND 580 FEET EAST FROM THE CENTER ¼ CORNER OF SECTION 14

Authorized Place of Use:

PRIMARY IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
25 S	5 W	WM	13	NE NW		12.4
25 S	5 W	WM	13	SE NW	42	3.2
25 S	5 W	WM	13	NE SW	42	0.6
25 S	5 W	WM	13	NW SW	42	4.1
25 S	5 W	WM	13	SW SW	42	3.4
25 S	5 W	WM	14	SE SE	41	5.9
Total:						29.6

4. Application T-13408 also proposed to add a new point of appropriation under Certificate 76599, as described below, to serve a portion of the proposed place of use.

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	5 W	WM	23	NE NE	41	POD 4: 1247 FEET SOUTH AND 918 FEET WEST FROM THE NE¼ CORNER OF SECTION 23

5. Temporary Transfer Application T-13408 proposes to temporarily change the place of use of the right to:

PRIMARY IRRIGATION										
Twp	Rng	Mer	Sec	Q-Q	Tax lot	Glot	DLC	Acres	Water User	POD
25 S	5 W	WM	13	SW NW	1800		42	1.2	Ralls	POD 1
25 S	5 W	WM	14	NE NW	701		45	2.0	Marshall	POD 1
25 S	5 W	WM	14	NW NE	1300			0.5	Rhyne	POD 1
25 S	5 W	WM	14	SW NE	2100	2		4.5	Neilson	POD 1
25 S	5 W	WM	14	SW NE	1300	2		2.4	Rhyne	POD 1
25 S	5 W	WM	14	SW NE	2400	2		0.1	Fennell	POD 1
25 S	5 W	WM	14	SW NE	2400		41	0.8	Fennell	POD 1
25 S	5 W	WM	14	SE NE	1800	1		0.2	Ralls	POD 1
25 S	5 W	WM	14	SE NW	500		41	0.1	Dawson	POD 1

PRIMARY IRRIGATION										
Twp	Rng	Mer	Sec	Q-Q	Tax lot	GLot	DLC	Acres	Water User	POD
25 S	5 W	WM	14	SE NW	500		45	0.4	Dawson	POD 1
25 S	5 W	WM	15	NE NE	2801		45	6.9	Coffel	POD 1
25 S	5 W	WM	15	NW NE	2801		45	1.4	Coffel	POD 1
25 S	5 W	WM	15	SW NE	2801		45	0.3	Coffel	POD 1
25 S	5 W	WM	15	SE NE	2801		45	0.4	Coffel	POD 1
25 S	5 W	WM	23	NE NE	500		41	1.5	Allen	POD 4
25 S	5 W	WM	23	NW NE	500		41	3.8	Allen	POD 4
25 S	5 W	WM	23	SW NE	500		41	2.1	Allen	POD 4
25 S	5 W	WM	23	SE NE	500		41	1.0	Allen	POD 4
Total:								29.6		

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

Certificate: 76600 in the name of SUTHERLIN WATER CONTROL DISTRICT (perfected under Reservoir Application R-74271 pursuant to HB 2153)
Use: SUPPLEMENTAL IRRIGATION of 29.6 ACRES
Priority Date: JANUARY 1, 1993
Limit: 19.85 Acre-Feet
Source: Water from SUTHERLIN CREEK, tributary of the NORTH UMPQUA RIVER, stored in an enlargement of PLAT I RESERVOIR (originally constructed under Permit R-4751)

Authorized Point of Diversion: Not described on Certificate

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
25 S	5 W	WM	13	NE NW		12.4
25 S	5 W	WM	13	SE NW	42	3.2
25 S	5 W	WM	13	NE SW	42	0.6
25 S	5 W	WM	13	NW SW	42	4.1
25 S	5 W	WM	13	SW SW	42	3.4
25 S	5 W	WM	14	SE SE	41	5.9
Total:						29.6

7. The authorized point of diversion is not described on the certificate; however, information is available from Department records and the CWRE indicating the diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	5 W	WM	14	NW SE	POD 1: 800 FEET SOUTH AND 580 FEET EAST FROM THE C1/4 CORNER OF SECTION 14

8. Application T-13408 also proposed to add a new point of diversion under Certificate 76600, as described below, to serve a portion of the proposed place of use.

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	5 W	WM	23	NE NE	41	POD 4: 1247 FEET SOUTH AND 918 FEET WEST FROM THE NE¼ CORNER OF SECTION 23

9. Temporary Transfer Application T-13408 proposes to temporarily change the place of use of the right to:

SUPPLEMENTAL IRRIGATION										
Twp	Rng	Mer	Sec	Q-Q	Tax lot	GLot	DLC	Acres	Water User	POD
25 S	5 W	WM	13	SW NW	1800		42	1.2	Williams	POD 1
25 S	5 W	WM	14	NE NW	701		45	2.0	Marshall	POD 1
25 S	5 W	WM	14	NW NE	1300			0.5	Rhyne	POD 1
25 S	5 W	WM	14	SW NE	2100	2		4.5	Bergeron	POD 1
25 S	5 W	WM	14	SW NE	1300	2		2.4	Rhyne	POD 1
25 S	5 W	WM	14	SW NE	2400	2		0.1	Fennell	POD 1
25 S	5 W	WM	14	SW NE	2400		41	0.8	Fennell	POD 1
25 S	5 W	WM	14	SE NE	1800	1		0.2	Williams	POD 1
25 S	5 W	WM	14	SE NW	500		41	0.1	Dawson	POD 1
25 S	5 W	WM	14	SE NW	500		45	0.4	Dawson	POD 1
25 S	5 W	WM	15	NE NE	2801		45	6.9	Coffel	POD 1
25 S	5 W	WM	15	NW NE	2801		45	1.4	Coffel	POD 1
25 S	5 W	WM	15	SW NE	2801		45	0.3	Coffel	POD 1
25 S	5 W	WM	15	SE NE	2801		45	0.4	Coffel	POD 1
25 S	5 W	WM	23	NE NE	500		41	1.5	Allen	POD 4
25 S	5 W	WM	23	NW NE	500		41	3.8	Allen	POD 4
25 S	5 W	WM	23	SW NE	500		41	2.1	Allen	POD 4
25 S	5 W	WM	23	SE NE	500		41	1.0	Allen	POD 4
Total:								29.6		

10. Certificate 76600 was issued under HB-2153 and includes the right to store 450 AF of water from Sutherlin Creek in an enlargement of Plat I Reservoir, and the right to use the stored water for primary and supplemental irrigation. Transfer T-13408 modifies only that portion of the right to use the stored water. The location of the reservoir and the point of diversion for storing the waters of Sutherlin Creek in an enlargement of Plat I Reservoir are not subject to transfer by T-13408.
11. A portion of the proposed place of use as described in prior Findings of Facts in this final order are layered with Water Right Certificate 973 which is for use of water from Bank's Creek and Smith Canyon Creek, tributary to the Calapooya River. On April 6, 2020, the water user submitted a signed statement that Certificate 973 will not be exercised on any parcels associated with this transfer during the regular 2020 irrigation season.

12. Pursuant to OAR 690-385-3520, on May 28, 2020, the Oregon Department of Fish and Wildlife (ODFW) determined that a fish screen is necessary at the new point of diversion (POD 4, as described above in Findings of Facts #4 and #8) to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.
13. The district temporary transfer application satisfies the criteria of ORS 540.570 and OAR 690-385-3000, contains the information required under OAR 690-385-3200, and includes a map meeting the requirements of OAR 690-385-3300.
14. 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.
15. The water rights for the use of water for primary and supplemental irrigation are subject to transfer as defined in OAR 690-385-0100(17).
16. Diversion structures, district canals, pumps, pump stations, ditches, pipeline, and sprinkler systems sufficient to use the full amount of water allowed under the existing rights are present.
17. The proposed change in places of use, as conditioned, will not result in enlargement of the rights as defined in OAR 690-385-0100(6).
18. The proposed change in places of use would not result in injury to other water rights as defined in OAR 690-385-0100(4).
19. All other applicable requirements for district temporary water right transfers are met.

Conclusions of Law

The temporary change in places of use and the new point of diversion to convey water to a portion of the temporary places of use proposed in application Temporary Transfer Application T-13408, as conditioned, are consistent with the requirements of ORS 540.570 and OAR 690-385-8000.

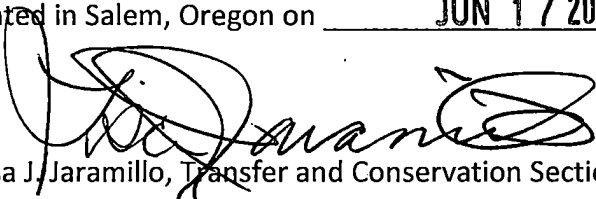
Now, therefore, it is ORDERED:

1. The temporary change in places of use and the new point of diversion needed to convey water to a portion of the temporary places of use proposed in Temporary Transfer Application T-13408 are approved.
2. The former places of use **shall not** be irrigated as part of these water rights during the 2020 irrigation season.

3. Any portions of primary water certificate 973 appurtenant to any of the proposed places of use involved in Transfer T-13408 shall remain unexercised during the 2020 irrigation season.
4. The use shall revert to the authorized places of use after the 2020 irrigation season. The authorization to use the new point of diversion shall be terminated concurrently.
5. Any application for permanent transfer of Certificates 76599 and 76600 shall be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Divisions 380 or 385. Approval of this temporary transfer does not establish a precedent for approval of a subsequent application filed for a permanent transfer.
6. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture of Certificates 76599 and 76600 under ORS 540.610.
7. The use of water on lands from which the right is transferred and in the new temporary location during the same irrigation season or calendar year is prohibited and may subject the district and the landowner to civil penalties.
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 POD #4 (described in Findings of Fact #4 and #8).
 - 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 meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
9. Fish screen condition:
 - a. **Prior to diverting water from POD 4** under this order, the water user shall install an approved fish screen at the new point of diversion (POD 4) and shall provide to OWRD a written statement from ODFW that the installed screen meets the state's criteria, or that ODFW has determined that a screen is not necessary.
 - b. The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the fish screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

10. The use of water under this temporary transfer may be conditioned or revoked at any time to the extent necessary to avoid injury if the Department finds the transfer causes injury to any existing water right.
11. 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 76599 and 76600.
12. The use of the remaining water rights described by Certificates 76599 and 76600, not involved in this transfer shall continue to be in accordance with the terms and conditions of Certificates 76599 and 76600.

Dated in Salem, Oregon on JUN 17 2020



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

Mailing Date: JUN 18 2020