

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

In the Matter of Transfer Application T-13498, Josephine County)))))	PRELIMINARY DETERMINATION PROPOSING APPROVAL OF A CHANGE IN PLACE OF USE AND PARTIAL CANCELLATION OF A WATER RIGHT CERTIFICATE
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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 to voluntarily request that it be cancelled.

Applicant

MURPHY ELECTRIC IRRIGATION, INC.
8227 NEW HOPE ROAD
GRANTS PASS, OR 97527

Receiving Landowner

JOSHUA AND GRETCHEN INGERSOLL
7843 NORTH APPLGATE ROAD
GRANTS PASS, OR 97527

Findings of Fact

1. On July 23, 2020, MURPHY ELECTRIC IRRIGATION, INC. filed an application to change the place of use under Certificate 54510, and to voluntarily cancel a portion of water right Certificate 27462. The Department assigned the application number T-13498.
2. Joshua and Gretchen Ingersoll are the receiving landowners, however both the applicant and the receiving landowners will be responsible for completion of the changes.
3. Notice of the application for transfer was published on August 4, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On December 11, 2020, the Department contacted the applicant by written correspondence to notify the applicant of deficiencies in the application. The application map does not identify the entirety of the right. The map identifies only 8.7 acres, and Certificate 54510 authorizes irrigation of 9.05 acres. Pursuant to OAR 690-380-3100(2)(f), the map shall include the location of any part of the right not involved in the proposed transfer. The application is proposing to cancel a portion of Certificate 27462, which was cancelled April

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

2, 2020, upon issuance of a Final Order approving T-13124, and issuance of remaining right Certificate 94804. Certificate 94804 is what should be identified in the application. The Department requested that the deficiencies be resolved by January 12, 2021. The Department did not receive a response to the deficiency letter.

5. On January 14, 2021, the Department contacted the applicant by written correspondence a second time, to notify the applicant of deficiencies in the application identified in Findings of Fact 4. The Department requested that the deficiencies be resolved by February 15, 2021. The Department did not receive a response to the deficiency letter.
6. After proof of completion, any water right certificate issued to confirm the changes to Certificates 54510 and 94804 under Transfer T-13498 is to remain in the name of Murphy Electric Irrigation, Inc.
7. On February 25, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-13498 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 29, 2021, for the applicant to respond.
8. On March 4, 2021, the Certified Water Rights Examiner submitted a statement regarding the condition of the applicant, along with a revised map, resolving the deficiencies. The Department has determined to recognize Certificate 94804 as the water right certificate for partial cancellation.
9. On March 11, 2021, 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.
10. The portion of the right to be transferred is as follows:

Certificate: 54510 in the name of MURPHY ELECTRIC IRRIGATION, INC., c/o LEWIS HAYES (confirmed by Rogue River (F) State Water Board Decree)
Use: IRRIGATION of 1.2 ACRES
Priority Date: FEBRUARY 1899
Rate: 0.018 CUBIC FOOT PER SECOND, IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION – NORTHSIDE DITCH
Source: APPLGATE RIVER, a tributary of ROGUE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	5 W	WM	21	SE NW	MURPHY ELECTRIC IRRIGATION, INC. DITCH - 1550 FEET SOUTH AND 2200 FEET EAST FROM THE NW CORNER OF SECTION 21
38 S	4 W	WM	6	SW SW	NORTHSIDE DITCH - 950 FEET NORTH AND 200 FEET EAST FROM THE SW CORNER OF SECTION 6

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
37 S	5 W	WM	19	NE NE	40	1.2

11. Transfer Application T-13498 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	
37 S	5 W	WM	20	NE NE	1.2	

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

12. 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.
13. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-13498.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.
16. On November 2, 2020, the Department determined the Murphy Electric Irrigation, Inc. (pump station) is not currently being utilized, and is not operational at this time.
17. The Department has not received an application map which includes all of the remaining right under Certificate 54510, pursuant to OAR 690-380-3100(2)(f).
18. The Department has not received a revised affidavit for the voluntary partial cancellation of a water right, identifying the correct certificate number to be cancelled, being Certificate 94804. The affidavit for the voluntary partial cancellation also did not include a deed listing the landowners and a legal description of the affected lands, and a copy of a water right final proof map with the abandoned portion of the right to be cancelled clearly drawn and identified.

Partial Cancellation of a Water Right

19. On February 13, 2019, the Department received an Affidavit for the Voluntary Cancellation of a Portion of a Water Right Certificate from Gary Bowden, Trustee. The right to be cancelled is as follows:

Certificate: 27462 in the name of MURPHY ELECTRIC IRRIGATION INC.
(perfected under Permit S-23592)

Use: SUPPLEMENTAL IRRIGATION of 2.0 ACRES

Priority Date: APRIL 26, 1955

Rate: 0.025 CUBIC FEET 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 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: BOARD SHANTY CREEK, a tributary of APPLGATE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
37 S	5 W	WM	21	NE NW

Authorized Place of Use to be Cancelled:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	5 W	WM	18	NW SE	2.0

20. On April 2, 2020, the Department issued a Final Order (Special Order Volume 116, Page 389), approving a change in place of use under Certificate 54521. Water right Certificate 27462 was cancelled, and remaining right Certificate 94804 was issued.
21. On July 23, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Robert H. and Wanda G. LaCombe. The right to be cancelled is as follows:

Certificate: 94804 in the name of MURPHY ELECTRIC IRRIGATION, INC.
(perfected under Permit S-23592)

Use: SUPPLEMENTAL IRRIGATION of 1.2 ACRES

Priority Date: APRIL 26, 1955

Rate: 0:015 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 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: BOARD SHANTY CREEK, a tributary of APPLGATE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
37 S	5 W	WM	21	NE NW

Authorized Place of Use to be Cancelled:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	5 W	WM	19	NE NE	1.2

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-13498 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

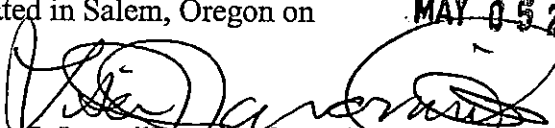
If Transfer Application T-13498 is approved, the final order will include the following:

- 1. The change in place of use proposed in Transfer Application T-13498 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 Certificates 54510 and 94804, and any related decree.*
- 3. Water right Certificates 54510 and 94804 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer and cancellation.*
- 4. The former place of use of the transferred right shall no longer receive water under the right.*
- 5. 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 the Murphy Electric Irrigation Inc. pump station, if this diversion is brought back into operation.*
 - 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.*
- 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 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 in the name of Murphy Electric Irrigation, Inc.*

Dated in Salem, Oregon on

~~MAY 05 2021~~


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

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or corey.a.courchane@oregon.gov

Protests should be addressed to the attention of Water Rights Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Notice Regarding Service Members: Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

May 5, 2021

MURPHY ELECTRIC IRRIGATION, INC.
8227 NEW HOPE ROAD
GRANTS PASS, OR 97527

SUBJECT: Water Right Transfer Application T-13498

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13498. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the Department's notice.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Please do not hesitate to contact me, at corey.a.courchane@oregon.gov or (503) 986-0825, if I may be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Corey Courchane". The signature is fluid and cursive, with the first name "Corey" and last name "Courchane" clearly distinguishable.

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-13498
Shavon L. Haynes, District 13 Watermaster (*via e-mail*)
Joshua and Gretchen Ingersoll, Receiving Landowner
Kenna Clay Jordan, CWRE #431 (*via e-mail*)

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