

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

In the Matter of Transfer Application)	FINAL ORDER DENYING TEMPORARY
T-14312, Polk County)	CHANGES IN PLACE OF USE

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

MARK GAIBLER
PO BOX 808
CARLTON, OR 97111

Findings of Fact

1. On August 21, 2023, MARK GAIBLER filed an application to temporarily change the places of use and under Certificates 83200 and 87717 for a period of 1 year. The Department assigned the application number T-14312.
2. Notice of the application for transfer was published on August 29, 2023, pursuant to OAR 690-380-4000.
3. The portion of the first right to be temporarily transferred is as follows:

Certificate:	83200 in the name of MARVIN JOHN DERA EVE AND PATRICIA ANN DERA EVE, M. EDWARD DERA EVE, DERA EVE FAMILY LLC (perfected under Permit S-46958)
Use:	IRRIGATION of 65.4 ACRES
Priority Date:	JULY 30, 1982
Rate:	0.82 CUBIC FOOT PER SECOND

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.

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 a diversion of ONE-EIGHTIETH of one cubic foot per second from direct flow, 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 from direct flow and storage from DERA EVE RESERVOIR, CONSTRUCTED UNDER PERMIT R-6487.

Source: ASH SWALE and DERA EVE RESERVOIR, CONSTRUCTED UNDER PERMIT R-6487

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	4 W	WM	7	NE SE	46	1590 FEET SOUTH AND 450 FEET WEST FROM THE NE CORNER OF DLC 46

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
6 S	4 W	WM	17	NE SW	3	17.3
6 S	4 W	WM	17	NW SW		28.6
6 S	4 W	WM	17	SW SW		11.3
6 S	4 W	WM	17	SE SW	4	8.2
					Total	65.4

4. Temporary Transfer Application T-14312 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	4 W	WM	6	SW SW	38	9.2
6 S	4 W	WM	6	SE SW	38	13.9
6 S	4 W	WM	6	SE SW	39	16.0
6 S	4 W	WM	6	SW SE	39	16.3
6 S	4 W	WM	7	NW NE	39	2.5
6 S	4 W	WM	7	NE NW	39	2.4
6 S	4 W	WM	7	NE NW	38	2.1
6 S	4 W	WM	7	NW NW	38	3.0
					Total	65.4

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

Certificate: 87717 in the name of RON AND JAMIE LEWIS (perfected under Permit S-54655)

Use: SUPPLEMENTAL IRRIGATION of 65.4 ACRES

Priority Date: SEPTEMBER 15, 2009

Rate: 5.2 ACRE FEET (AF), BEING 3.9 AF FROM AN UNNAMED RESERVOIR ORIGINALLY CONSTRUCTED UNDER PERMIT R-10482, AND 1.3 AF FROM AN UNNAMED RESERVOIR, ENLARGED UNDER PERMIT R-11459

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 a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: AN UNNAMED RESERVOIR

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	4 W	WM	7	SE SW	46	3695 FEET SOUTH AND 2155 FEET WEST FROM THE NE CORNER OF MCCARTY DLC 46

Authorized Points of Re-Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	4 W	WM	7	NE SE	46	2685 FEET SOUTH AND 500 FEET WEST FROM THE NE CORNER OF MCCARTY DLC 46
6 S	4 W	WM	7	NW SE	46	2685 FEET SOUTH AND 825 FEET WEST FROM THE NE CORNER OF MCCARTY DLC 46

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
6 S	4 W	WM	17	NE SW	3	17.3
6 S	4 W	WM	17	NW SW		28.6
6 S	4 W	WM	17	SW SW		11.3
6 S	4 W	WM	17	SE SW	4	8.2
					Total	65.4

6. Temporary Transfer Application T-14312 proposes to temporarily change the place of use of the right to:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	4 W	WM	6	SW SW	38	9.2
6 S	4 W	WM	6	SE SW	38	13.9
6 S	4 W	WM	6	SE SW	39	16.0
6 S	4 W	WM	6	SW SE	39	16.3
6 S	4 W	WM	7	NW NE	39	2.5
6 S	4 W	WM	7	NE NW	39	2.4
6 S	4 W	WM	7	NE NW	38	2.1
6 S	4 W	WM	7	NW NW	38	3.0
					Total	65.4

7. The Department has determined that the lands proposed to change place of use have been irrigated in the 2023 season and therefore cannot be transferred.

Temporary Transfer Review Criteria

8. 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.
9. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
10. The proposed changes would result in enlargement of the rights. The proposed changes did not prevent the lands from which the water right is removed during the period of the temporary transfer from receiving water under the transferred rights, as required by ORS 540.523(7).
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 changes in place of use proposed in Temporary Transfer Application T-14312 are not consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The temporary change in places of use proposed in Temporary Transfer Application T-14312 are DENIED.

Dated in Salem, Oregon on **MAR 27 2024**



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR
Oregon Water Resources Department

Mailing Date: **MAR 28 2024**