

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-9995, Polk County, Oregon) TEMPORARY CHANGE IN PLACE OF
) USE

ORS 537.705 and 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 or appropriation authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

Garth Mulkey
13535 De Armond Road
Monmouth, Oregon 97361

Findings of Fact

1. Garth Mulkey filed an application to temporarily transfer the place of use under Certificate 62126 for a period of one year. The Department assigned the application number T-9995.
2. The portion of the right to be transferred is as follows:

Certificate: 62126 in the name of Gylan Mulkey
Use: Irrigation of 56.0 acres
Priority Date: November 19, 1979
Quantity: 0.58 cubic foot per second (cfs)
Rate/Duty: 1/80 cfs per acre, not to exceed 2.5 acre-feet per acre
Source: Soap Creek, with any deficiency in the available supply from Soap Creek to be made up from Berry Creek and Gylan Mulkey Reservoir, tributary to Luckiamute River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼		Lot	Location
10	S	5	W	W.M.	1	SW	SW	6	Soap Creek -- 50 Feet North and 1200 Feet East from SW Corner, Section 1

This is a final order in other than 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 either 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.

Township		Range		Meridian	Sec	¼ ¼	Lot	Location
10	S	5	W	W.M.	2	SE NE	2	Berry Creek -- 3200 Feet North and 750 Feet West from SW Corner, Section 1
10	S	5	W	W.M.	2	SE NE	2	Reservoir -- 3200 Feet North and 660 Feet West from SW Corner, Section 1

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Lot	Acres
10	S	5	W	W.M.	1	NE SW	7	1.8
10	S	5	W	W.M.	1	NW SW		17.8
10	S	5	W	W.M.	1	SW SW	6	25.7
10	S	5	W	W.M.	1	SE SW	5	10.7

3. Application T-9995 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	Acres
10	S	5	W	W.M.	2	NE NW	5.2
10	S	5	W	W.M.	2	SE NW	2.3
10	S	5	W	W.M.	2	NW NE	29.1
10	S	5	W	W.M.	2	SW NE	19.4

4. Notice of the application for temporary transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
5. Water has been used within the last five years according to the terms and conditions of the right and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
6. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
7. The proposed change would not result in enlargement of the right.
8. The proposed change 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(6) 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 proposed in application T-9995 is consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in application T-9995 is approved.
2. The former place of use **shall not** be irrigated as part of this water right during the 2005 irrigation season.
3. The use shall revert to the authorized place of use at the end of the 2005 irrigation season.
4. The approval of this temporary transfer may be revoked or modified if the Department finds the change causes injury to any existing water right.
5. A subsequent application for permanent transfer of Certificate 62126 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 62126.
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. When required by the Department, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water used. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
9. The use of the remaining water right described by Certificate 62126 shall continue to be in accordance with the terms and conditions of Certificate 62126.

Dated at Salem, Oregon this 16th day of September, 2005.



Phillip C. Ward, Director

Mailing date: SEP 19 2005