

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING
T-12568, Polk County	)	TEMPORARY CHANGES IN PLACE
	)	OF USE, AND A 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**

KAUER FARMS  
DAVE KAUER  
7325 SE AMITY DAYTON HWY  
AMITY, OR 97101

**Findings of Fact**

1. On January 17, 2017, DAVE KAUER OF KAUER FARMS filed an application to temporarily change the place of use under Certificates 36427, 39185, 57711, 58749 and change the place of use and point of diversion to serve the proposed place of use under Certificate 47648 for a period of 3 years. The Department assigned the application number T-12568.
2. Notice of the application for transfer was published on January 24, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The portion of the first right to be temporarily transferred is as follows:  
**Certificate:** 36427 in the name of DR. C. J. MOSER (perfected under Permit S-27996)  
**Use:** IRRIGATION of 64.8 ACRES  
**Priority Date:** APRIL 26, 1962  
**Rate:** 0.81 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-

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.

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:** LITTLE LUCKIAMUTE RIVER, a tributary of LUCKIAMUTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	5 W	WM	31	NW SW	1250 FEET NORTH AND 870 FEET WEST FROM THE NW CORNER OF BOWMAN DLC 55

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
8 S	5 W	WM	31	NW SW	2		6.7
8 S	5 W	WM	31	SW SW		55	3.2
8 S	5 W	WM	31	SW SW	3		7.2
8 S	5 W	WM	31	SE SW		55	3.2
8 S	6 W	WM	36	NE SE		56	4.7
8 S	6 W	WM	36	NE SE	2		10.8
8 S	6 W	WM	36	NW SE	3		0.1
8 S	6 W	WM	36	NW SE		56	16.6
8 S	6 W	WM	36	SW SE	3		1.4
8 S	6 W	WM	36	SW SE		56	2.4
8 S	6 W	WM	36	SE SE			6.5
9 S	5 W	WM	6	NE NW		39	0.3
9 S	5 W	WM	6	NW NW	1		0.3
9 S	5 W	WM	6	NW NW		39	1.4
Total							64.8

4. Temporary Transfer Application T-12568 proposes to temporarily change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
8 S	5 W	WM	31	NW SW	2		1.9
8 S	6 W	WM	36	SE NE	2		1.2
8 S	6 W	WM	36	SE SW		56	5.3
8 S	6 W	WM	36	NE SE	2		8.1
8 S	6 W	WM	36	NE SE		56	0.4
8 S	6 W	WM	36	SW SE	3		11.2
8 S	6 W	WM	36	SW SE		56	20.3
8 S	6 W	WM	36	SE SE			3.5
9 S	6 W	WM	1	NW NE	2		8.6
9 S	6 W	WM	1	NW NE		58	4.1
9 S	6 W	WM	1	NE NW		58	0.2
Total							64.8

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

**Certificate:** 39185 in the name of J.L. HENDRICKSON (perfected under Permit S-34153)

**Use:** IRRIGATION of 69.1 ACRES

**Priority Date:** FEBRUARY 10, 1969

**Rate:** 0.87 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** LITTLE LUCKIAMUTE RIVER, a tributary of LUCKIAMUTE RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
8 S	5 W	WM	31	NW SW	2	1350 FEET NORTH AND 925 FEET EAST FROM THE SW CORNER OF SECTION 31
8 S	5 W	WM	31	NW SW	2	2330 FEET NORTH AND 80 FEET EAST FROM THE SW CORNER OF SECTION 31

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
8 S	5 W	WM	31	NW SW	2		1.9
8 S	6 W	WM	36	SE NE	2		1.2
8 S	6 W	WM	36	SE SW		56	8.6
8 S	6 W	WM	36	NE SE		56	0.3
8 S	6 W	WM	36	NE SE	2		4.9
8 S	6 W	WM	36	NW SE		56	0.6
8 S	6 W	WM	36	SW SE	3		11.2
8 S	6 W	WM	36	SW SE		56	24.0
8 S	6 W	WM	36	SE SE			3.5
9 S	6 W	WM	1	NW NE		58	4.1
9 S	6 W	WM	1	NW NE	2		8.6
9 S	6 W	WM	1	NE NW		58	0.2
Total							69.1

6. Temporary Transfer Application T-12568 proposes to temporarily change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
8 S	5 W	WM	31	SW SW	3		12.5
8 S	5 W	WM	31	SW SW		55	0.3
8 S	6 W	WM	36	NW NE	1		0.1
8 S	6 W	WM	36	NW NE		56	6.9
8 S	6 W	WM	36	SW NE		56	7.5
8 S	6 W	WM	36	SE NW		56	12.5
8 S	6 W	WM	36	NE SW		56	0.5
8 S	6 W	WM	36	SE SE			11.2
9 S	5 W	WM	6	NW NW	1		9.7
9 S	5 W	WM	6	NW NW		39	0.1
9 S	6 W	WM	1	NE NE	1		7.8
Total							69.1

7. The third right to be temporarily transferred is as follows:

**Certificate:** 47648 in the name of J. L. HENDRICKSON (perfected under Permit S-39475)  
**Use:** IRRIGATION of 29.2 ACRES  
**Priority Date:** JUNE 3, 1975  
**Rate:** 0.37 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** LITTLE LUCKIAMUTE RIVER, a tributary of LUCKIAMUTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
8 S	6 W	WM	36	NE NE	1	1180 FEET SOUTH AND 720 FEET WEST FROM THE NE CORNER OF SECTION 36

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	6 W	WM	36	SE NW	56	1.0
8 S	6 W	WM	36	NE SW	56	13.0
8 S	6 W	WM	36	NW SW	56	12.9
8 S	6 W	WM	36	SW SW	56	2.3
Total						29.2

8. Temporary Transfer Application T-12568 proposes to temporarily change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
8 S	5 W	WM	31	NW SW	2		6.7
8 S	5 W	WM	31	SW SW	2		0.4
8 S	5 W	WM	31	SW SW	3		2.9
8 S	5 W	WM	31	SW SW		55	3.2
8 S	5 W	WM	31	SE SW		55	3.2
8 S	6 W	WM	36	NE SE	2		2.2
8 S	6 W	WM	36	SE SE	2		7.0
8 S	6 W	WM	36	SE SE			1.6
9 S	5 W	WM	6	NE NW		39	0.3
9 S	5 W	WM	6	NW NW		39	1.4
9 S	5 W	WM	6	NW NW	1		0.3
Total							29.2

9. An additional point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-12568 proposes an additional point of diversion approximately 0.4 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
8 S	5 W	WM	31	NW SW	2	2330 FEET NORTH AND 80 FEET EAST FROM THE SW CORNER OF SECTION 31

10. The fourth right to be temporarily transferred is as follows:

**Certificate:** 57711 in the name of J. L. HENDRICKSON (perfected under Permit S-19633)

**Use:** IRRIGATING 38.5 ACRES

**Priority Date:** MARCH 7, 1950

**Rate:** 0.48 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** LITTLE LUCKIAMUTE RIVER, a tributary of LUCKIAMUTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
8 S	5 W	WM	31	NW SW	2	2330 FEET NORTH AND 80 FEET EAST FROM THE SW CORNER OF SECTION 31

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
8 S	5 W	WM	31	SW SW	3		1.4
8 S	6 W	WM	36	SE SE			19.5
9 S	5 W	WM	6	NW NW		39	0.1
9 S	5 W	WM	6	NW NW	1	39	9.7
9 S	6 W	WM	1	NE NE	1		7.8
Total							38.5

11. Temporary Transfer Application T-12568 proposes to temporarily change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	6 W	WM	36	SE NW	56	0.9
8 S	6 W	WM	36	NE SW	56	23.2
8 S	6 W	WM	36	NW SW	56	12.1
8 S	6 W	WM	36	SW SW	56	2.3
Total						38.5

12. The fifth right to be temporarily transferred is as follows:

**Certificate:** 58749 in the name of J. L. HENDRICKSON (perfected under Permit S-21626)  
**Use:** IRRIGATION of 38.9 ACRES  
**Priority Date:** JULY 21, 1952  
**Rate:** 0.49 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** LITTLE LUCKIAMUTE RIVER, a tributary of LUCKIAMUTE RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
8 S	5 W	WM	31	NW SW	2	2330 FEET NORTH AND 80 FEET EAST FROM THE SW CORNER OF SECTION 31
8 S	6 W	WM	36	NE NE	1	1280 FEET SOUTH AND 630 FEET WEST FROM THE NE CORNER OF SECTION 36

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
8 S	5 W	WM	31	SW SW		55	0.3
8 S	5 W	WM	31	SW SW	3		11.1
8 S	6 W	WM	36	NW NE	1		0.1
8 S	6 W	WM	36	NW NE		56	6.9
8 S	6 W	WM	36	SW NE		56	7.5
8 S	6 W	WM	36	SE NW		56	12.5
8 S	6 W	WM	36	NE SW		56	0.5
						Total	38.9

13. Temporary Transfer Application T-12568 proposes to temporarily change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	
8 S	6 W	WM	36	NE SW	56	10.8	
8 S	6 W	WM	36	SE SW	56	20.0	
8 S	6 W	WM	36	NW SE	56	4.0	
8 S	6 W	WM	36	SW SE	56	4.1	
						Total	38.9

**Temporary Transfer Review Criteria**

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. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
16. The proposed changes would not result in enlargement of the rights.
17. 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**

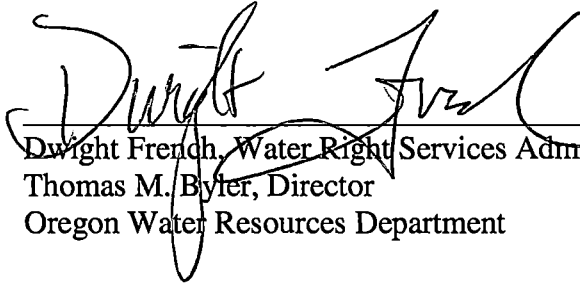
The temporary changes in place of use and point of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-12568 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

### **Now, therefore, it is ORDERED:**

1. The temporary changes in place of use and point of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-12568 are approved.
2. The former place of use **shall not** be irrigated as part of these water rights during the 2016, 2017, and 2018, irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2018 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 Certificates 36427, 39185, 47648, 57711 and 58749 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 Certificates 36427, 39185, 47648, 57711 and 58749.
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 rights described by Certificates 36427 and 39185 shall continue to be in accordance with the terms and conditions of Certificates 36427 and 39185.

Dated at Salem, Oregon this 17 day of March, 2017.

  
Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

Mailing Date: MAR 22 2017