

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

In the Matter of Transfer Application)
T-12340, Benton County)
)
 FINAL ORDER APPROVING
 TEMPORARY 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

GATHERING TOGETHER FARM
JOHN EVELAND AND SALLY BREWER
25159 GRANGE HALL RD
PHILOMATH, OR 97330

Findings of Fact

1. On April 18, 2016, GATHERING TOGETHER FARM, JOHN EVELAND AND SALLY BREWER filed an application to temporarily change the place of use under Certificates 24183 and 26244 for a period of 5 years. The Department assigned the application number T-12340.
2. Notice of the application for transfer was published on April 26, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. During the review process, the Department found that the public notice from April 26, 2016 did not include Certificate 26244; therefore on May 24, 2016 the transfer was re-published, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. The portion of the first right to be temporarily transferred is as follows:
Certificate: 24183 in the name of DORVAL and ANNA BEVENS (perfected under Permit S-16134)
Use: IRRIGATION of 5.32 ACRES

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.

Priority Date: JANUARY 4, 1945

Rate: 0.04 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: MARY'S RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
12 S	6 W	WM	11	SE SE	46	AS PROJECTED WITHIN D. HENDERSON DLC

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
12 S	6 W	WM	11	SE SE	46	0.53
12 S	6 W	WM	13	NW NW	46	0.30
12 S	6 W	WM	13	NW NW	51	2.48
12 S	6 W	WM	14	NE NE	46	1.56
12 S	6 W	WM	14	NE NE	51	0.45
Total						5.32

5. Temporary Transfer Application T-12340 proposes to temporarily change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
12 S	6 W	WM	13	NW NW	46	2.13
12 S	6 W	WM	13	NW NW	51	3.19
Total						5.32

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

Certificate: 26244 in the name of ELMER J. BURNWORTH (perfected under Permit S-23680)

Use: IRRIGATION of 8.35 ACRES

Priority Date: MARCH 29, 1955

Rate: 0.08 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: MARY'S RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
12 S	6 W	WM	13	SE NW	51	AS PROJECTED WITHIN HARTLESS DLC #51

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
12 S	6 W	WM	13	NE SW	51	8.35

7. Certificate 26244 does not describe the measured distances of the point of diversion, however information is available from the applicant indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
12 S	6 W	WM	13	SE NW	51	1438.5 FEET SOUTH AND 3181.2 FEET WEST OF THE NE CORNER OF THE E. HARTLESS DLC #51

8. Temporary Transfer Application T-12340 proposes to temporarily change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
12 S	6 W	WM	13	SE SW	51	8.35

Temporary Transfer Review Criteria

9. 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.
10. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
11. The proposed changes would not result in enlargement of the rights.
12. 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-12340 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 proposed in Temporary Transfer Application T-12340 are approved.

2. The former place of use **shall not** be irrigated as part of these water rights during the 2016, 2017, 2018, 2019 and 2020 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2020 irrigation season.
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 24183 and 26244 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 24183 and 26244.
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 existing point of diversion.
 - 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 24183 and 26244 shall continue to be in accordance with the terms and conditions of Certificates 24183 and 26244.

Dated at Salem, Oregon this 27 day of June, 2016.



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

JUN 29 2016

Mailing Date: _____