

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

In the Matter of Transfer Application)
T-13428, Wallowa County)
)
) FINAL ORDER APPROVING A
) TEMPORARY CHANGE 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

KIRBY AND NANCY FIEGEL
PO BOX 173
LOSTINE, OR 97857

Findings of Fact

1. On April 27, 2020, KIRBY AND NANCY FIEGEL filed an application to temporarily change the place of use under Certificate 66831 for a period of 5 years. The Department assigned the application number T-13428.
2. Notice of the application for transfer was published on May 12, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 13 and 14, 2020, the watermaster prepared and submitted on behalf of the applicant maps that better describe Temporary Transfer Application T-13428.
4. The portion of the right to be temporarily transferred is as follows:

Certificate: 66831 in the name of ARNILDO J. UPPIANO (perfected under Permit S-44274)

Use: IRRIGATING 51.7 ACRES

Priority Date: APRIL 18, 1979

Rate: 1.08 CUBIC FEET PER SECOND (CFS)

Limit/Duty: The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited

<p>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.</p>

to a diversion of ONE-FORTIETH of one cubic foot per second (or its equivalent) and 3.5 acre-feet for each acre irrigated during the irrigation season of each year.

Source: LOSTINE RIVER, tributary to the WALLOWA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	27	NW SE	2870 FEET SOUTH AND 220 FEET EAST FROM THE N1/4 CORNER OF SECTION 27

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	43 E	WM	16	NE SW	39.3
1 S	43 E	WM	16	NW SE	12.4
Total					51.7

- Temporary Transfer Application T-13428 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	43 E	WM	31	NW SW	36.8
1 S	43 E	WM	31	SW SW	14.9
Total					51.7

- Temporary Transfer Application T-13428 proposes to temporarily transfer a water right within the boundaries of Westside Ditch Company. The district was notified of the proposed temporary transfer and indicated that the district did not object to the transfer.

Temporary Transfer Review Criteria

- Water has been used within the last five years according to the terms and conditions of the right. There is no evidence available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
- The proposed change would not result in enlargement of the right.
- 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(5) if the Department later finds that the transfer is causing injury to any existing water right.

Conclusions of Law

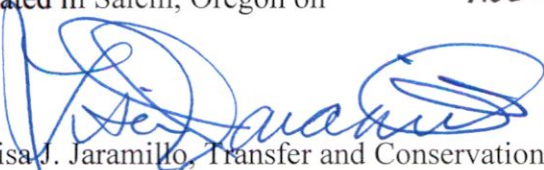
The temporary change in place of use proposed in Temporary Transfer Application T-13428 is consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The temporary change in place of use proposed in Temporary Transfer Application T-13428 is approved.
2. The former place of use **shall not** be irrigated as part of this water right during the 2020, 2021, 2022, 2023, and 2024 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2024 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 66831 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 66831.
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 suitable measurement device, at each point of diversion.
 - b. The water user shall maintain the measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the measuring device; provided however, where the measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
9. The use of the remaining water right described by Certificate 66831 shall continue to be in accordance with the terms and conditions of Certificate 66831.

Dated in Salem, Oregon on

AUG 19 2020



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

Mailing Date:

AUG 20 2020