

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

| | | |
|---------------------------------------|---|-------------------------------|
| In the Matter of Transfer Application |) | FINAL ORDER APPROVING |
| T-13810, Polk County |) | TEMPORARY CHANGES IN PLACE |
| |) | OF USE AND CHANGE IN 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

ALAN AND JANICE FROST
14060 ELKINS ROAD
MONMOUTH, OR 97361

Findings of Fact

1. On August 30, 2021, ALAN AND JANICE FROST filed an application to temporarily change the place of use under Certificate 44889 and change the place of use and change the point of diversion to serve the proposed place of use under Certificate 65744 for a period of 5 years. The Department assigned the application number T-13810.
2. Notice of the application for transfer was published on September 7, 2021, 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: 44889 in the name of C. A. TWISS (perfected under Permit S-34380)
Use: IRRIGATION of 50.0 ACRES
Priority Date: MAY 12, 1969 FOR 0.10 CUBIC FEET PER SECOND (CFS) FROM LUCKIAMUTE RIVER AND AUGUST 1, 1969 AND 0.53 FROM THE LITTLE LUCKIAMUTE RIVER

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.

Rate: 0.63 CFS, BEING 0.10 CFS FROM THE LUCKIAMUTE RIVER AND 0.53 FROM THE LITTLE LUCKIAMUTE RIVER

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: LUCKIAMUTE AND LITTLE LUCKIAMUTE RIVERS, tributary of WILLAMETTE RIVER

Authorized Points of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|--|
| 9 S | 5 W | WM | 8 | SE SE | 56 | LUCKIAMUTE RIVER: 3720 FEET SOUTH AND 460 FEET EAST FROM THE SW CORNER OF LOT 5, SECTION 8; JAMES SMITH DLC 56 |
| 9 S | 5 W | WM | 16 | NW SW | 56 | LITTLE LUCKIAMUTE RIVER: 460 FEET NORTH AND 550 FEET WEST FROM THE SW CORNER OF LOT 5 (SE¼ SE¼), SECTION 8; JAMES SMITH DLC 56 |
| 9 S | 5 W | WM | 17 | SW SE | 56 | LUCKIAMUTE RIVER: 4870 FEET SOUTH AND 1600 FEET WEST FROM THE SW CORNER OF LOT 5 (SE¼ SE¼), SECTION 8; JAMES SMITH DLC 56 |

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres | Source |
|-----|-----|-----|-----|-------|-----|-------|-------------------------|
| 9 S | 5 W | WM | 16 | NW NW | 56 | 11.4 | LITTLE LUCKIAMUTE RIVER |
| 9 S | 5 W | WM | 16 | SW NW | 56 | 3.7 | LITTLE LUCKIAMUTE RIVER |
| 9 S | 5 W | WM | 17 | NE NE | 56 | 13.0 | LITTLE LUCKIAMUTE RIVER |
| 9 S | 5 W | WM | 17 | SE NE | 56 | 14.3 | LITTLE LUCKIAMUTE RIVER |
| 9 S | 5 W | WM | 17 | SE NE | 56 | 7.4 | LUCKIAMUTE RIVER |
| 9 S | 5 W | WM | 17 | NE SE | 56 | 0.2 | LUCKIAMUTE RIVER |
| | | | | | | Total | 50.0 |

4. Temporary Transfer Application T-13810 proposes to temporarily change the place of use of the right to:

| IRRIGATION | | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres | |
| 9 S | 5 W | WM | 16 | NW SW | 56 | 5.0 | |
| 9 S | 5 W | WM | 17 | NE SE | 56 | 20.0 | |
| 9 S | 5 W | WM | 17 | NW SE | 56 | 19.6 | |
| 9 S | 5 W | WM | 17 | SW SE | 56 | 5.4 | |
| | | | | | | Total | 50.0 |

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

Certificate: 65744 in the name of ALAN L. AND JANICE L. FROST (perfected under Permit S-19639)

Use: IRRIGATION of 50.0 ACRES
Priority Date: OCTOBER 26, 1950
Rate: 0.62 CUBIC FOOT PER SECOND
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 to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.
Source: LUCKIAMUTE RIVER, a tributary of the WILLAMETTE RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|---|
| 9 S | 5 W | WM | 17 | SE SE | 69 | POD 1: 630 FEET NORTH AND 1090 FEET WEST FROM THE SE CORNER OF SECTION 17 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 9 S | 5 W | WM | 16 | NW SW | 56 | 5.0 |
| 9 S | 5 W | WM | 17 | NE SE | 56 | 20.0 |
| 9 S | 5 W | WM | 17 | NW SE | 56 | 19.6 |
| 9 S | 5 W | WM | 17 | SW SE | 56 | 5.4 |
| | | | | | Total | 50.0 |

6. Temporary Transfer Application T-13810 proposes to temporarily change the place of use of the right to:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 9 S | 5 W | WM | 16 | NW NW | 56 | 9.1 |
| 9 S | 5 W | WM | 16 | SW NW | 56 | 6.0 |
| 9 S | 5 W | WM | 17 | NE NE | 56 | 13.0 |
| 9 S | 5 W | WM | 17 | SE NE | 56 | 21.7 |
| 9 S | 5 W | WM | 17 | NE SE | | 0.2 |
| | | | | | Total | 50.0 |

7. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13810 proposes to move the authorized point of diversion approximately 0.7 mile downstream to:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|--|
| 9 S | 5 W | WM | 16 | NW SW | 56 | POD 2: 3720 FEET SOUTH AND 460 FEET EAST FROM THE SW CORNER OF LOT 5, SECTION 8; WITHIN JAMES SMITH DLC 56 |

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 prevent the lands from which the water rights are 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 and point of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-13810 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

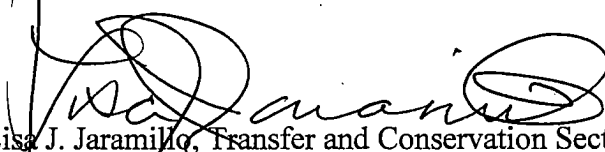
1. The temporary changes in place of use and change in point of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-13810 are approved.
2. The former place of use **shall not** be irrigated as part of these water rights during the 2021, 2022, 2023, 2024 and 2025 irrigation seasons.
3. The use shall revert to the authorized places of use at the end of the 2025 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 44889 and 65744 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 44889 and 65744.
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.
- 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 44889 and 65744 shall continue to be in accordance with the terms and conditions of Certificates 44889 and 65744.

Dated in Salem, Oregon on **JAN 25 2022**


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

Mailing Date: **JAN 26 2022**