

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-13439, Clackamas County)	TEMPORARY CHANGE IN PLACES
)	OF USE AND POINTS OF
)	APPROPRIATION

Authority

Oregon Revised Statute (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 appropriation 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

HEYERLY BROTHERS c/o JEFF HEYERLY
31958 S PALMER RD
MOLALLA, OR 97038

Findings of Fact

1. On May 15, 2020, HEYERLY BROTHERS c/o JEFF HEYERLY filed an application to temporarily change the place of use and change the points of appropriation to serve the proposed place of use under Certificates 38044, 38507 and 75769 for a period of 2 years. The Department assigned the application number T-13439.
2. Notice of the application for transfer was published on June 2, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The portion of the first right to be transferred is as follows:
Certificate: 38044 in the name of RICHARD MOORHOUSE (perfected under Permit G-3992)
Use: IRRIGATION of 42.9 ACRES
Priority Date: FEBRUARY 13, 1968
Rate: 0.53 CUBIC FEET PER SECOND

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.

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: A WELL a tributary of GRIBBLE CREEK

Authorized Point Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	2 E	WM	31	SW SE	670 FEET NORTH AND 830 FEET EAST FROM THE S1/4 CORNER OF SECTION 31

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	2 E	WM	31	SE SW	23.2
4 S	2 E	WM	31	SW SE	19.7
				Total	42.9

4. Temporary Transfer Application T-13439 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	13	SW NW	19.6
5 S	1 E	WM	13	NE SW	10.3
5 S	2 E	WM	7	NE NW	87
5 S	2 E	WM	7	NW NW	4.3
				Total	42.9

5. A change in points of appropriation are necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13439 proposes to move the authorized points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Authorized Well in miles (mi.)
5 S	1 E	WM	12	NE SE	WELL 1 - 420 FEET SOUTH AND 690 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 12	1.9 mi.
5 S	1 E	WM	12	NW SE	WELL 2 - 1940 FEET NORTH AND 620 FEET WEST FROM THE SOUTH 1/4 CORNER OF SECTION 12	2.2 mi.

6. The second right to be transferred is as follows:

Certificate: 38507 in the name of LEWIS O. VELLE (perfected under Permit G-3517)
Use: IRRIGATION of 13.6 ACRES
Priority Date: NOVEMBER 14, 1966
Rate: 0.11 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: A WELL within the KAISER CREEK (ROCK CREEK)

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 E	WM	14	SE SW	930 FEET NORTH AND 260 FEET WEST FROM THE S1/4 CORNER OF SECTION 14

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	14	SE SW	13.6

7. Temporary Transfer Application T-13439 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	13	SE NW	13.6

8. A change in points of appropriation are necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13439 proposes to move the authorized points of appropriation approximately:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Authorized Well in miles (mi.)
5 S	1 E	WM	12	NE SE	WELL 1 - 420 FEET SOUTH AND 690 FEET WEST FROM THE E1/4 CORNER OF SECTION 12	1.9 mi.
5 S	1 E	WM	12	NW SE	WELL 2 - 1940 FEET NORTH AND 620 FEET WEST FROM THE S1/4 CORNER OF SECTION 12	1.9 mi.

9. The portion of the third right to be transferred is as follows:

Certificate: 75769 in the name of GEORGE KYLLO (perfected under Permit G-2958)

Use: IRRIGATION of 33.3 ACRES

Priority Date: JUNE 8, 1965

Rate: 0.27 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 a diversion of 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: A WELL a tributary of MOLALLA RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	2 E	WM	7	NE SW	41	1030 FEET SOUTH AND 1330 FEET EAST FROM THE NW CORNER OF DLC 41

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	1 E	WM	12	SE SE	41	0.7
5 S	1 E	WM	13	NE NE	41	2.8
5 S	2 E	WM	7	NW SW	41	8.6
5 S	2 E	WM	7	SW SW	41	16.5
5 S	2 E	WM	18	NW NW	41	4.7
					Total	33.3

10. Temporary Transfer Application T-13439 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	13	SE NW	24.2
5 S	1 E	WM	13	NE SW	9.1
				Total	33.3

11. A change in points of appropriation are necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13439 proposes to move the authorized points of appropriation approximately:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Authorized Well in Miles (mi.)
5 S	1 E	WM	12	NE SE	WELL 1 - 420 FEET SOUTH AND 690 FEET WEST FROM THE E1/4 CORNER OF SECTION 12	0.6 mi.
5 S	1 E	WM	12	NW SE	WELL 2 - 1940 FEET NORTH AND 620 FEET WEST FROM THE S1/4 CORNER OF SECTION 12	0.5 mi.

Temporary Transfer Review Criteria

12. Water has been used within the last five years according to the terms and conditions of the rights.
13. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
14. The proposed changes would not result in enlargement of the rights.
15. 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.

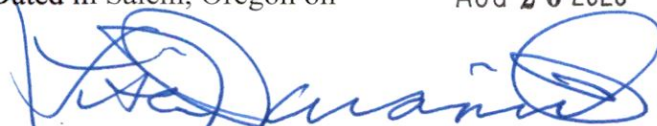
Conclusions of Law

The temporary change in places of use and points of appropriation to serve the temporary places of use proposed in Temporary Transfer Application T-13439 are 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 and change in points of appropriation to serve the temporary place of use proposed in Temporary Transfer Application T-13439 are approved.
2. The former places of use **shall not** be irrigated as part of these water rights during the 2020 and 2021 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2021 irrigation season. The authorization to use the temporary point of appropriation 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 38044, 38507, and 75769 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 38044, 38507, and 75769.
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. The use of the remaining water rights described by Certificates 38044, 38507, and 75769 shall continue to be in accordance with the terms and conditions of Certificates 38044, 38507 and 75769.

Dated in Salem, Oregon on AUG 26 2020



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

Mailing Date: AUG 27 2020