

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

In the Matter of Transfer Application)
T-12474, Marion County)
)
) **FINAL ORDER APPROVING**
) **TEMPORARY CHANGE IN PLACE OF**
) **USE AND 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

DAVID J. BIELANBERG
16425 HARIGSTAD RD NE
SILVERTON, OR 97381

Findings of Fact

1. On September 9, 2016, DAVID J. BIELANBERG LLC, filed an application to temporarily change the place of use and a point of diversion to serve the proposed place of use under Certificate 35994 for a period of 1 year. The Department assigned the application number T-12474.
2. Notice of the application for transfer was published on September 20, 2016, pursuant to OAR 690-380-4000. One comment was filed in response to the notice.
3. The right to be temporarily transferred is as follows:

Certificate: 35994 in the name of GERALD POTTER (perfected under Permit S-28299)
Use: IRRIGATION OF 42.0 ACRES
Priority Date: AUGUST 10, 1962
Rate: 0.29 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 ONE-EIGHTIETH of one cubic foot per second, per acre or its equivalent for

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.

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: ABIQUA CREEK within the PUDDING RIVER BASIN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 E	WM	34	SW SE	1130 FEET NORTH AND 2410 FEET WEST FROM THE SE CORNER OF SECTION 34

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 E	WM	34	NW SE	7.80
6 S	1 E	WM	34	SW SE	14.20
6 S	1 E	WM	34	SE SE	20.00
Total					42.00

4. Temporary Transfer Application T-12474 proposes to temporarily change the place of use of the water right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 E	WM	34	NW SE	7.80
6 S	1 E	WM	34	SW SE	14.20
6 S	1 E	WM	34	SE SE	20.00
Total					42.00

5. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-12474 proposes to move the authorized point of diversion approximately 4.3 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	24	SW SE	980 FEET NORTH AND 1350 FEET WEST FROM THE SE CORNER OF SECTION 24

Temporary Transfer Review Criteria

6. 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.
7. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
8. The proposed changes would not result in enlargement of the right.
9. 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 place of use and point of diversion to convey water to the temporary place of use proposed in application Temporary Transfer Application T-12474 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-12469 are approved.
2. The former place of use **shall not** be irrigated as part of this water right during the 2016 irrigation season.
3. The use shall revert to the authorized place of use at the end of the 2016 irrigation season. The authorization to use the new 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 Certificate 35994 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 35994.
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 right described by Certificate 35994 shall continue to be in accordance with the terms and conditions of Certificate 35994.

Dated at Salem, Oregon this 7 day of November, 2016.


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

NOV 11 2016

Mailing Date: _____