

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-9939, Linn County, Oregon) TEMPORARY CHANGE IN PLACE
) OF USE

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 diversion or appropriation authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

Jim Cate
34750 Santiam Hwy
Lebanon, Oregon 97355

Findings of Fact

1. Jim Cate filed an application to temporarily transfer the place of use under Certificates 23637, 38468, 43855 and 49203 for a period of five years. The Department assigned the application number T-9939.
2. The first the right to be transferred is as follows:

Certificate: 23637 in the name of Max, Elizabeth & Clara Burkhart
Use: Irrigation of 39.5 acres
Priority Date: April 19, 1956
Quantity: 0.49 cubic foot per second (cfs)
Rate/Duty: 1/80 cfs per acre, not to exceed 2½ acre-feet per acre
Source: Burkhart Well in the Willamette River Basin

Authorized Point of Appropriation:

Township		Range		Meridian	Sec	¼ ¼	DLC
11	S	2	W	W.M.	26	NW SW	S. Pennington DLC #57

This is a final order in other than 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 either 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.

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		DLC	Acres
11	S	2	W	W.M.	26	NW	SW	S. Pennington DLC #57	18.3
11	S	2	W	W.M.	26	SW	SW	S. Pennington DLC #57	2.2
11	S	2	W	W.M.	27	NE	SE	S. Pennington DLC #57	17.0
11	S	2	W	W.M.	27	SE	SE	S. Pennington DLC #57	2.0

3. Application T-9939 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼		Acres
11	S	2	W	W.M.	28	NE	NE	26.9
11	S	2	W	W.M.	28	SE	NE	12.6

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

Certificate: 38468 in the name of James W. or Marie T. Hickey

Use: Irrigation of 30.7 acres

Priority Date: April 3, 1964

Quantity: 0.24 cfs

Rate/Duty: 1/80 cfs per acre, not to exceed 2½ acre-feet per acre

Source: Sump Well No. 1 in the Oak Creek (Mill Creek) Basin

Authorized Point of Appropriation:

Township		Range		Meridian	Sec	¼ ¼		DLC	Location
11	S	2	W	W.M.	22	NW	SW	Knox DLC 55	320 Feet South & 2400 Feet West from NE Corner, Knox DLC 55

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		DLC	Acres
11	S	2	W	W.M.	22	NW	SW	Knox DLC 55	8.5
11	S	2	W	W.M.	22	SW	SW	Knox DLC 55	20.0
11	S	2	W	W.M.	27	NW	NW	Knox DLC 55	2.2

5. Application T-9939 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼		Acres
11	S	2	W	W.M.	28	NW	NE	2.5
11	S	2	W	W.M.	28	SW	NE	2.4
11	S	2	W	W.M.	28	NE	NW	12.9
11	S	2	W	W.M.	28	SE	NW	12.9

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

Certificate: 43855 in the name of Reta Ayers
Use: Irrigation of 4.0 acres
Priority Date: November 25, 1968
Quantity: 0.05 cfs
Rate/Duty: 1/80 cfs per acre, not to exceed 2½ acre-feet per acre
Source: One Well in the South Santiam River Basin
Authorized Point of Appropriation:

Township		Range		Meridian	Sec	¼ ¼	DLC	Location
11	S	2	W	W.M.	27	NE SE	Moist DLC 58	2810 Feet South & 950 Feet West from NE Corner, Section 27

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	DLC	Acres
11	S	2	W	W.M.	27	SE NE	Moist DLC 58	1.4
11	S	2	W	W.M.	27	NE SE	Moist DLC 58	2.6

7. Application T-9939 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	Acres
11	S	2	W	W.M.	27	NW NW	0.4
11	S	2	W	W.M.	27	SW NW	3.1
11	S	2	W	W.M.	28	NE NE	0.2
11	S	2	W	W.M.	28	SE NE	0.3

8. The fourth right to be transferred is as follows:

Certificate: 49203 in the name of James W. & Marie T. Hickey
Use: Irrigation of 51.9 acres
Priority Date: April 14, 1972
Quantity: 0.65 cfs
Rate/Duty: 1/80 cfs per acre, not to exceed 2½ acre-feet per acre
Source: Well No. 2 in the Oak Creek Basin
Authorized Point of Appropriation:

Township		Range		Meridian	Sec	¼ ¼	DLC	Location
11	S	2	W	W.M.	22	SW SW	Knox DLC 55	650 Feet South & 1250 Feet West from NE Corner, Knox DLC 55

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	DLC	Acres
11	S	2	W	W.M.	22	NE SW	Knox DLC 55	9.0
11	S	2	W	W.M.	22	NW SW	Knox DLC 55	1.1
11	S	2	W	W.M.	22	SW SW	Knox DLC 55	4.1
11	S	2	W	W.M.	22	SE SW	Knox DLC 55	35.3

Township		Range		Meridian	Sec	¼ ¼	DLC	Acres
11	S	2	W	W.M.	27	NE NW	Knox DLC 55	2.2
11	S	2	W	W.M.	27	NW NW	Knox DLC 55	0.2

9. Application T-9939 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	Acres
11	S	2	W	W.M.	28	NE NE	4.5
11	S	2	W	W.M.	28	NW NE	33.8
11	S	2	W	W.M.	28	SW NE	12.0
11	S	2	W	W.M.	28	SE NE	1.6

10. Notice of the application for temporary transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.

11. Water has been used within the last five years according to the terms and conditions of the right and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.

12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.

13. The proposed change would not result in enlargement of the right.

14. 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(6) if the Department later finds that the transfer is causing injury to any existing water right.

Conclusions of Law

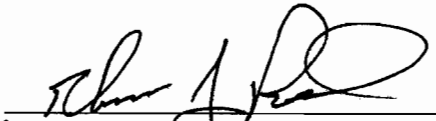
The temporary change in place of use proposed in application T-9939 is consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in application T-9939 is approved.
2. The former place of use **shall not** be irrigated as part of this water right during the 2005, 2006, 2007, 2008 and 2009 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2009 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 Certificates 23637, 38468, 43855 and 49203 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 23637, 38468, 43855 and 49203.
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. When required by the Department, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water used. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
9. The use of the remaining water right described by Certificates 23637, 38468, 43855 and 49203 shall continue to be in accordance with the terms and conditions of Certificates 23637, 38468, 43855 and 49203.

Dated at Salem, Oregon this 20th day of July, 2005.


Phillip C. Ward, Director

Mailing date: 7-26-2005