

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

| | | |
|---------------------------------------|---|------------------------------------|
| In the Matter of Transfer Application |) | FINAL ORDER APPROVING A TEMPORARY |
| T-13741, Polk County |) | CHANGE IN PLACES OF USE AND POINTS |
| |) | 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

HAMILTON FARMS LLC
14190 AIRLIE RD
MONMOUTH, OR 97361

Findings of Fact

1. On June 18, 2021, HAMILTON FARMS LLC filed an application to temporarily change the places of use and change the points of diversion to serve the proposed places of use under Certificates 22676 and 26647 for a period of 5 years. The Department assigned the application number T-13741.
2. Notice of the application for transfer was published on June 29, 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:** 22676 in the name of E. H. LORENCE (perfected under Permit S-19640)
 - Use:** IRRIGATION of 45.55 ACRES
 - Priority Date:** DECEMBER 9, 1949
 - Rate:** 0.57 CUBIC FOOT 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: LUCKIAMUTE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|---------------------|
| 9 S | 5 W | WM | 24 | NE NW | 62 | POD #1 – NONE GIVEN |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 9 S | 5 W | WM | 13 | SW SW | 62 | 0.50 |
| 9 S | 5 W | WM | 23 | NE NE | 62 | 5.60 |
| 9 S | 5 W | WM | 23 | SE NE | 62 | 15.20 |
| 9 S | 5 W | WM | 24 | NW NW | 62 | 20.95 |
| 9 S | 5 W | WM | 24 | SW NW | 62 | 3.30 |
| Total | | | | | | 45.55 |

4. Temporary Transfer Application T-13741 proposes to temporarily change the place of use of the right to:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 9 S | 5 W | WM | 15 | SW SW | 2.80 |
| 9 S | 5 W | WM | 21 | NE NE | 16.20 |
| 9 S | 5 W | WM | 21 | NW NE | 9.30 |
| 9 S | 5 W | WM | 21 | SE NW | 9.65 |
| 9 S | 5 W | WM | 22 | NW NW | 7.60 |
| Total | | | | | 45.55 |

5. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13741 proposes to move the authorized point of diversion approximately 5.6 miles upstream to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|---|
| 9 S | 5 W | WM | 16 | SW SE | POD #2 - 100 FEET NORTH AND 1740 FEET WEST FROM THE SE CORNER OF SECTION 16 |

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

Certificate: 26647 in the name of E. H. LORENCE (perfected under Permit S-22946)

Use: IRRIGATION of 17.14 ACRES

Priority Date: MAY 24, 1954

Rate: 0.21 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: LUCKIAMUTE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|---------------------|
| 9 S | 5 W | WM | 24 | NE NW | 62 | POD #1 - NONE GIVEN |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 9 S | 5 W | WM | 23 | SE NE | 62 | 9.70 |
| 9 S | 5 W | WM | 23 | NE SE | 62 | 7.34 |
| 9 S | 5 W | WM | 23 | NW SE | 62 | 0.10 |
| Total | | | | | | 17.14 |

7. Temporary Transfer Application T-13741 proposes to temporarily change the place of use of the right to:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | |
| 9 S | 5 W | WM | 21 | NW NE | 8.20 | |
| 9 S | 5 W | WM | 21 | SW NE | 1.60 | |
| 9 S | 5 W | WM | 21 | NE NW | 7.34 | |
| Total | | | | | | 17.14 |

8. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13741 proposes to move the authorized point of diversion approximately 5.6 miles upstream to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|---|
| 9 S | 5 W | WM | 16 | SW SE | POD #2 - 100 FEET NORTH AND 1740 FEET WEST FROM THE SE CORNER OF SECTION 16 |

Temporary Transfer Review Criteria

9. 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.
10. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.

11. The proposed changes would prevent the lands from which the water right is removed during the period of the temporary transfer from receiving water under the transferred rights, as required by ORS 540.523(7).
12. 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 diversion to convey water to the temporary places of use proposed in Temporary Transfer Application T-13741 is consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

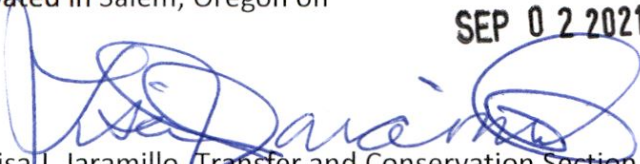
Now, therefore, it is ORDERED:

1. The temporary change in places of use and change in points of diversion to convey water to the temporary places of use proposed in Temporary Transfer Application T-13741 is approved.
2. The former places 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 place 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 causes injury to any existing water right.
5. A subsequent application for permanent transfer of Certificates 22676 and 26647 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 22676 and 26647.
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 (new and existing).
 - 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 22676 and 26647 shall continue to be in accordance with the terms and conditions of Certificates 22676 and 26647.

Dated in Salem, Oregon on

SEP 02 2021



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

Mailing Date:

SEP 03 2021