

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

In the Matter of Transfer Application)	RECONSIDERATION OF A FINAL
T-13253, Yamhill County)	ORDER RECORDED IN SPECIAL
)	ORDER VOLUME 114, PAGES 162-
)	166, WITHDRAWING A FINAL
)	ORDER AND ISSUING A
)	SUPERSEDING FINAL ORDER
)	DENYING TEMPORARY CHANGES
)	IN PLACE OF USE

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

WILLAMETTE VALLEY LAND, LLC
C/O PAUL KUEHNE
PO BOX 99
LAFAYETTE, OR 97127

Findings of Fact

1. On September 17, 2019, WILLAMETTE VALLEY LAND, LLC, C/O PAUL KUEHNE filed an application to temporarily change the place of use under Certificates 48103, 48511, and 48512 for a period of 5 years. The Department assigned the application number T-13253.
2. Notice of the application for transfer was published on September 24, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 13, 2019, the Department issued a Final Order (Special Order Volume 114, Page 162), denying temporary changes in place of use, as the lands currently irrigated under the rights would continue to receive water from the same source.

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.

4. On February 10, 2020, Schroeder Law Offices, P. C., submitted a Request for Reconsideration in accordance with OAR 137-004-0080, on behalf of the applicant.
5. On April 3, 2020, the Department issued a Notice of Reconsideration of Final Order on Temporary Transfer Application T-13253.
6. This order is issued to supersede the previous order recorded at Special Order Volume 114, Pages 162 to 166.
7. The portion of the first right to be temporarily transferred is as follows:

Certificate: 48103 in the name of RANDY COLEMAN (perfected under Permit S-37397)
Use: IRRIGATION of 127.8 ACRES
Priority Date: JANUARY 22, 1974
Rate: 1.60 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 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: SOUTH YAMHILL RIVER, a tributary of YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	4 W	WM	6	SE NE	37	1610 FEET SOUTH AND 470 FEET WEST FROM THE NE CORNER OF SECTION 6

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	4 W	WM	31	NE NE	74	11.9
4 S	4 W	WM	31	NW NE	74	5.3
4 S	4 W	WM	31	SW NE	74	11.3
4 S	4 W	WM	31	SE NE	74	16.1
4 S	4 W	WM	32	NW NW	74	12.1
4 S	4 W	WM	32	SW NW	74	22.4
4 S	4 W	WM	32	SW NW	59	3.5
4 S	4 W	WM	32	SE NW	59	0.5
4 S	4 W	WM	32	NE SW	59	12.2
4 S	4 W	WM	32	NW SW	59	22.1
4 S	4 W	WM	32	SW SW	59	6.0
4 S	4 W	WM	32	SE SW	59	4.4
Total						127.8

8. Temporary Transfer Application T-13253 proposes to temporarily change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
4 S	4 W	WM	31	SW NE	5		2.9
4 S	4 W	WM	31	SE NW	4		2.5
4 S	4 W	WM	31	NE SW			33.0
4 S	4 W	WM	31	SE SW		75	1.5
4 S	4 W	WM	31	SE SW	1		40.6
4 S	4 W	WM	31	NW SE			17.9
4 S	4 W	WM	31	SW SE			16.7
5 S	4 W	WM	6	NW NE			11.3
5 S	4 W	WM	6	SW NE			1.4
Total							127.8

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

Certificate: 48511 in the name of HERBERT C. COLEMAN (perfected under Permit S-41341)

Use: IRRIGATION of 44.2 ACRES

Priority Date: JANUARY 25, 1977

Rate: 0.55 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: SOUTH YAMHILL RIVER, a tributary of YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	4 W	WM	6	SE NE	37	1600 FEET SOUTH AND 480 FEET WEST FROM THE NE CORNER OF SECTION 6

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	4 W	WM	31	NE SE	59	11.8
4 S	4 W	WM	31	SE SE	59	9.8
4 S	4 W	WM	32	NW SW	59	4.6
4 S	4 W	WM	32	SW SW	59	15.6
4 S	4 W	WM	32	SE SW	59	2.4
Total						44.2

10. Temporary Transfer Application T-13253 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	4 W	WM	6	SW NE		9.2
5 S	4 W	WM	6	NE NW		18.1
5 S	4 W	WM	6	NE NW	64	11.9
5 S	4 W	WM	6	NW NW	64	1.5
5 S	4 W	WM	6	SW NW	64	1.8
5 S	4 W	WM	6	SW NW	64	1.7
Total						44.2

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

Certificate: 48512 in the name of BETTY JEAN YOCKEY (perfected under Permit S-41697)

Use: IRRIGATION of 72.9 ACRES

Priority Date: APRIL 12, 1977

Rate: 0.91 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: SOUTH YAMHILL RIVER, a tributary of YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	4 W	WM	6	SE NE	37	1600 FEET SOUTH AND 480 FEET WEST FROM THE NE CORNER OF SECTION 6

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
4 S	4 W	WM	31	SW NE	5		2.1
4 S	4 W	WM	31	SE NE	6		0.2
4 S	4 W	WM	31	SE NE		59	2.4
4 S	4 W	WM	31	NE SE	7		0.8
4 S	4 W	WM	31	NE SE		59	18.0
4 S	4 W	WM	31	NW SE		59	15.7
4 S	4 W	WM	31	SW SE		59	15.7
4 S	4 W	WM	31	SE SE		59	18.0
Total							72.9

12. Temporary Transfer Application T-13253 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	4 W	WM	6	SW NW	64	6.8
5 S	4 W	WM	6	SE NW		25.4
5 S	4 W	WM	6	SE NW	64	15.5
5 S	4 W	WM	6	NE SW		1.9
5 S	4 W	WM	6	NE SW	64	5.6
5 S	4 W	WM	6	NW SW	64	17.7
Total						72.9

13. The applicant, Willamette Valley Land (WVL), proposes to move 75% of lands off the current place of use (POU) to another property where the proposed POU will have a typical irrigation system. The portion not affected by this temporary transfer, being 25% of the current POU will remain in 5 foot wide strips centered on rows of Hazelnut trees that are parallel and 20 feet apart.
14. The Department has determined the lands proposed for changing place of use are non-irrigated strips already being utilized under a current micro-irrigation system.

Temporary Transfer Review Criteria

15. 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.
16. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
17. The proposed changes would NOT 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).
18. 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 proposed in Temporary Transfer Application T-13253 are NOT consistent with the requirements of ORS 540.523 and OAR 690-380-8000.


Now, therefore, it is ORDERED:

1. The order recorded at Special Order Volume 114, Pages 162 to 166 is withdrawn, is of no further force or effect, and is superseded by this order.

2. The temporary changes in place of use proposed in Temporary Transfer Application T-13253 are DENIED.

Dated in Salem, Oregon on

FEB 10 2021


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

FEB 11 2021

Mailing Date: