

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

In the Matter of Transfer Application            )           FINAL ORDER APPROVING TEMPORARY  
T-13881, Clackamas County                    )           CHANGES IN PLACE OF USE AND POINT  
  )           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 December 23, 2021, HEYERLY BROTHERS C/O JEFF HEYERLY, filed an application to temporarily change the place of use and change the point of appropriation to serve the proposed place of use under Certificates 38507 and 95232 for a period of 4 years. The Department assigned the application number T-13881.
2. Notice of the application for transfer was published on January 4, 2022, pursuant to OAR 690-380-4000.
3. The first 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

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.

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 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

4. Temporary Transfer Application T-13881 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

5. A change in point of appropriation is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13881 proposes to move the authorized point of appropriation approximately 1.9 miles northeast to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
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
5 S	1 E	WM	12	SW SE	WELL 2 - 1355 FEET SOUTH AND 2480 FEET WEST FROM THE E1/4 CORNER OF SECTION 12

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

**Certificate:** 95232 in the name of HEYERLY BROTHERS (perfected under Permit G-17897)

**Use:** IRRIGATION of 40.0 ACRES

**Priority Date:** MAY 20, 1997

**Rate:** 0.37 CUBIC FOOT PER SECOND

**Limit/Duty:** The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

**Period of Use:** MAY 1 THROUGH OCTOBER 30

**Source:** WELL 1 AND WELL 2 in WILLAMETTE RIVER BASIN



**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 E	WM	12	NE SE	WELL 1 (ORIGINAL) - 420 FEET SOUTH AND 690 FEET WEST FROM THE E1/4 CORNER OF SECTION 12
5 S	1 E	WM	12	SW SE	WELL 2 (ADDITIONAL) - 1355 FEET SOUTH AND 2480 FEET WEST FROM THE E1/4 CORNER OF SECTION 12

**Authorized Place of Use:**

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
5 S	1 E	WM	12	NW SE			1.9
5 S	1 E	WM	12	SW SE			2.0
5 S	1 E	WM	13	NE NE		37	3.4
5 S	1 E	WM	13	NE NE	1		0.2
5 S	1 E	WM	13	NW NE	2		15.7
5 S	1 E	WM	13	NW NE		37	3.6
5 S	1 E	WM	13	SW NE		37	4.3
5 S	1 E	WM	13	SE NE	7		0.9
5 S	1 E	WM	13	SE NE		37	8.0
						Total	40.0

7. Temporary Transfer Application T-13881 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	1 E	WM	13	NE SW		20.0
5 S	2 E	WM	7	NE SW	40	13.4
5 S	2 E	WM	7	NW SW	40	6.6
					Total	40.0

**Temporary Transfer Review Criteria**

8. 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.
9. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
10. 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).
11. 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

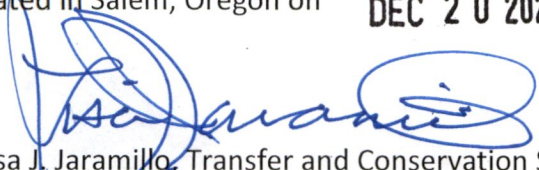
The temporary changes in place of use and points of appropriation to serve the temporary place of use proposed in Temporary Transfer Application T-13881 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

### 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-13881 are approved.
2. The former place of use **shall not** be irrigated as part of these water rights during the 2024, 2025, 2026, 2027 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2027 irrigation season. The authorization to use the temporary points 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. The quantity of water diverted at the proposed temporary points of appropriation (Wells 1 and 2) shall not exceed the quantity of water lawfully available at the original point of appropriation (Well).
6. A subsequent application for permanent transfer of Certificates 38507 and 95232 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.
7. 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 38507 and 95232.
8. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
9. 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 appropriation.
  - 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.

10. The use of the remaining water rights described by Certificates 38507 and 95232 shall continue to be in accordance with the terms and conditions of Certificates 38507 and 95232.

Dated in Salem, Oregon on **DEC 20 2023**

A handwritten signature in blue ink, appearing to read 'Lisa J. Jaramillo', is written over the typed name.

Lisa J. Jaramillo, Transfer and Conservation Section Manager for  
DOUGLAS E. WOODCOCK, ACTING DIRECTOR  
Oregon Water Resources Department

*Mailing Date:* **DEC 21 2023**