

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-13180, Polk County)	TEMPORARY CHANGE 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

DAVE KAUER
KAUER FARMS
7325 SE AMITY DAYTON HWY
AMITY, OR 97101

Findings of Fact

1. On May 13, 2019, DAVE KAUER, KAUER FARMS filed an application to temporarily change the place of use under Certificate 36427 for a period of 4 years. The Department assigned the application number T-13180.
2. Notice of the application for transfer was published on May 21, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 31, 2019, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of the deficiencies in the application. The Department requested that the deficiencies be resolved by July 1, 2019.
4. On June 4, 2019, the applicant's agent submitted a copy of the current recorded deed and Evidence of Use Affidavit with a wet signature, resolving the deficiencies.

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.

5. On June 18, 2019, the applicant submitted a statement indicating the water used for irrigation under Certificate 39185 would not be used on the "TO" lands covered under Certificate 36427 for the duration of the temporary transfer.

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

Certificate: 36427 in the name of DR. C. J. MOSER (perfected under Permit S-27996)

Use: IRRIGATION of 12.6 ACRES

Priority Date: APRIL 26, 1962

Rate: 0.16 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: LITTLE LUCKIAMUTE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
8 S	5 W	WM	31	NW SW	2	1250 FEET NORTH AND 870 FEET WEST FROM THE NW CORNER OF DLC 55

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
8 S	5 W	WM	31	NW SW	2	7.4
8 S	5 W	WM	31	SW SW	3	5.2
Total						12.6

7. Temporary Transfer Application T-13180 proposes to temporarily change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
8 S	5 W	WM	31	SW SW		55	0.1
8 S	5 W	WM	31	SW SW	3		6.3
8 S	6 W	WM	36	SE SE			5.1
9 S	6 W	WM	1	NE NE	1		1.1
Total							12.6

8. The proposed place of use (POU) for 5.1 acres located in SE SE, Section 36, T8S, R6W, WM, will become temporarily layered with the POU under Certificate 39185.

Temporary Transfer Review Criteria

9. 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.

10. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
11. The proposed change, as conditioned, would not result in enlargement of the right.
12. 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(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 proposed in Temporary Transfer Application T-13180 is 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 proposed in Temporary Transfer Application T-13180 is approved.
2. The former place of use **shall not** be irrigated as part of this water right during the 2019, 2020, 2021, and 2022 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2022 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 Certificate 36427 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 36427.
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 right described by Certificate 36427 shall continue to be in accordance with the terms and conditions of Certificate 36427.
10. The proposed place of use (POU) for 5.1 acres located in SE SE, Section 36, T8S, R6W, WM, will not receive water for irrigation under Certificate 39185 for the duration of the temporary transfer.

Dated in Salem, Oregon on

 JUL 23 2019

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

Mailing Date: JUL 24 2019