

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-13187, Yamhill County)	TEMPORARY CHANGES IN PLACE
)	OF USE AND AN ADDITIONAL
)	POINT 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

KAUER FAMILY FARMS
C/O DAVE KAUER
7325 SE AMITY DAYTON HWY
AMITY, OR 97101

Findings of Fact

1. On May 23, 2019, KAUER FAMILY FARMS, C/O DAVE KAUER filed an application to temporarily change the place of use and add an additional point of diversion to serve the proposed place of use under Certificate 40065 for a period of 5 years. The Department assigned the application number T-13187.
2. Notice of the application for transfer was published on June 4, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 5, 2019, Dave Kauer sent a written request via e-mail, asking to voluntarily terminate Temporary Transfer T-12925 under Certificate 40065, approved on July 31, 2018 and recorded at Special order 108, Pages 995-998.

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

Certificate: 40065 in the name of RAYMOND C. KAUER (perfected under Permit S-29408)
Use: IRRIGATION OF 77.9 ACRES
Priority Date: FEBRUARY 21, 1964
Rate: 0.85 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, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.
Source: SOUTH FORK YAMHILL RIVER, a tributary of YAMHILL RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Measured Distances
4 S	4 W	WM	34	SE NE		57	NO. 1 - 5040 FEET NORTH AND 3090 FEET WEST FROM THE SE CORNER OF DLC 64
4 S	4 W	WM	34	NW SW	1		NO. 2 - 3750 FEET NORTH AND 6380 FEET WEST FROM THE SE CORNER OF DLC 64

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
4 S	4 W	WM	33	NE SE	1		0.3
4 S	4 W	WM	33	SE SE	8		3.0
4 S	4 W	WM	33	SE SE		72	14.6
4 S	4 W	WM	34	SW SW		72	6.2
5 S	4 W	WM	3	NW NW	4		3.6
5 S	4 W	WM	3	NW NW		64	13.2
5 S	4 W	WM	3	SW NW		64	19.6
5 S	4 W	WM	4	NE NE	1		1.6
5 S	4 W	WM	4	NE NE		64	10.1
5 S	4 W	WM	4	SE NE	1		5.7
Total							77.9

5. The Department has found a scrivener's error in describing the authorized points of diversion for Certificate 40065.
6. The Department has found information that better describes the location of the authorized points of diversion for Certificate 40065 as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Measured Distances
4 S	4 W	WM	34	SE NE		57	NO. 1 - 5040 FEET NORTH AND 3090 FEET WEST FROM THE SE CORNER OF DLC 61
4 S	4 W	WM	34	NW SW	1		NO. 2 - 3750 FEET NORTH AND 6380 FEET WEST FROM THE SE CORNER OF DLC 61

7. Temporary Transfer Application T-13187 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	29	SE SW	3		8.3
4 S	4 W	WM	29	NE SE	5		0.4
4 S	4 W	WM	29	NW SE	4		0.3
4 S	4 W	WM	29	SW SE			33.5
4 S	4 W	WM	29	SE SE	6		2.0
4 S	4 W	WM	32	NW NE	2		5.4
4 S	4 W	WM	32	NE NW		58	7.8
4 S	4 W	WM	32	NE NW	3		2.6
4 S	4 W	WM	32	NW NW		58	17.6
						Total	77.9

8. An additional point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13187 proposes to move the authorized points of diversion to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approximate distance from original points of diversion location measured in miles (mi.)	
							NO. 1	NO. 2
4 S	4 W	WM	28	NW SE	83	560 FEET SOUTH AND 1720 FEET WEST FROM THE E1/4 CORNER OF SECTION 28	4.5 mi.	5.6 mi.

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 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 changes would not result in enlargement of the right.
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.

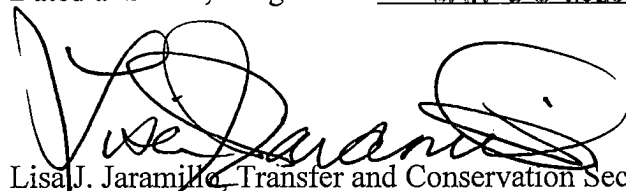
Conclusions of Law

The temporary changes in place of use and point of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-13187 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 and change in point of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-13187 is approved.
2. The former place of use **shall not** be irrigated as part of this water right during the 2019, 2020, 2021, 2022, and 2023 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2023 irrigation season. The authorization to use the proposed 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 cause injury to any existing water right.
5. A subsequent application for permanent transfer of Certificate 40065 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 40065.
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. The use of the remaining water right described by Certificate 40065 shall continue to be in accordance with the terms and conditions of Certificate 40065.

Dated at Salem, Oregon this JAN 03 2020.



Lisa J. Jaramilla, Transfer and Conservation Section Manager, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing Date: JAN 06 2020