

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

In the Matter of Transfer Application)	SUPERSEDING FINAL ORDER
T-12802, Josephine County)	APPROVING A TEMPORARY
)	CHANGE IN PLACE OF USE AND
)	CORRECTING A SCRIVENER'S
)	ERROR IN A PREVIOUS ORDER

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

GABRIEL AND KIM YOUNG
719 ALTHOUSE CREEK RD
CAVE JUNCTION, OR 97523

Findings of Fact

1. On December 22, 2017, GABRIEL AND KIM YOUNG filed an application to temporarily change the place of use under Certificate 54974 for a period of four years. The Department assigned the application number T-12802.
2. Notice of the application for transfer was published on January 2, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 26, 2018, the Department issued a Final Order for temporary transfer T-12802, recorded at Special Order Volume 107, Pages 718-720. Shortly following the issuance of the Final Order, the Department was informed of a scrivener's error. The measured distance of the authorized point of diversion, provided by the Applicant, should be referenced by the Northeast corner of Section 9.
4. This order is issued to correct a scrivener's error and to supersede the previous Final Order recorded at Special Order Volume 107, Pages 718-720.

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

Certificate: 54974 in the name of MARY ELLEN LEONARD (confirmed by Althouse Creek decree entered of record at Salem in the Order Record of the State of Oregon, in Volume 4, at page 427)
Use: IRRIGATION OF 3.0 ACRES
Priority Date: 1858 FOR TRACT 1
Rate: 0.06 CUBIC FOOT PER SECOND
Source: ALTHOUSE CREEK, a tributary of ILLINOIS RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	7 W	WM	4	NE NW	1.3
40 S	7 W	WM	4	SE NW	1.7
TOTAL					3.0

6. Temporary Transfer Application T-12802 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	7 W	WM	4	NE NW	3.0

7. Certificate 54974 does not describe the location of the point of diversion nor does the Althouse Creek Decree, however information is available from the applicant indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	7 W	WM	9	SE NE	2030 FEET SOUTH AND 70 FEET WEST FROM THE NE CORNER OF SECTION 9

8. Certificate 54974 does not describe the duty of the right, however information is available from the Althouse Creek decree indicating that the duty allowed for the right is 1/50th per acre under the terms and conditions contained in the decree.

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 diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
11. The proposed change 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-12802 is consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The Final Order entered at Special Order Volume 107, Pages 718-720 is withdrawn and of no further force and effect and is superseded by this Final Order.
2. The temporary change in place of use proposed in Temporary Transfer Application T-12802 is approved.
3. The former place of use **shall not** be irrigated as part of this water right during the 2018, 2019, 2020, 2021, and 2022 irrigation season.
4. The use shall revert to the authorized place of use at the end of the 2022 irrigation season.
5. The approval of this temporary transfer may be revoked or modified if the Department finds the change causes injury to any existing water right.
6. A subsequent application for permanent transfer of Certificate 54974 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 Certificate 54974.
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. The use of the remaining water right described by Certificate 54974 shall continue to be in accordance with the terms and conditions of Certificate 54974.

Dated at Salem, Oregon, MAR 05 2018.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing Date: MAR 06 2018