BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-11113, Yamhill County)	TEMPORARY CHANGE IN PLACE OF
)	USE

Authority

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.

OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

WAYLAND HENRY 14200 HWY 99 DAYTON, OR 97111 Receiving Land Owner FOUR D'S & K, LLC 601 S. PARK STREET CARLTON, OR 97111

Findings of Fact

- On April 29, 2009, WAYLAND HENRY submitted an application to temporarily change the place of under Certificate 22135 for a period of 5 years; however, he failed to submit the required filing fees at that time. On July 27, 2010, the filing fees were submitted. The Department assigned the application number T-11113.
- The portion of the right to be temporarily transferred is as follows:

Certificate:

22135 in the name of ELSIE V. COLE (perfected under Permit S-20840)

Use:

IRRIGATION of 39.86 ACRES

Priority Date: NOVEMBER 2, 1951

Rate:

0.49 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, is limited to

ONE-EIGHTIETH of one cubic foot per second for each acre irrigated from direct flow 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 from direct flow and storage from reservoir constructed under

Permit No. R-1275.

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.

Source:

UNNAMED STREAM, tributary to the YAMHILL RIVER

RESERVOIR constructed under App. No. R-26608, Permit No. R-1275.

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
4 S	.3 W	WM	8	NW SW	45

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	
4 S	3 W	WM	7	NE SE	45	6.31	
4 S	3 W	WM	7	SE SE	45	3.50	
4 S	3 W	WM	8	SW NW	45	11.11	
4 S	3 W	WM	8	SE NW	45	0.04	
4 S	3 W	WM	8	NW SW	45	17.50	
4 S	3 W	WM	8	SW SW	45	1.40	
Total						39.86	

3. Temporary Transfer Application T-11113 proposes to temporarily change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	
4 S	3 W	WM	7	NW NE	45	0.38	
4 S	3 W	WM	7	SW NE	45	0.59	
4 S	3 W	WM	7	NE NW	45	4.62	
4 S	3 W	WM	7	SW NW	45	7.91	
4 S	3 W	WM	7	SE NW	45	26.36	
Total							

4. Notice of the application for transfer was published on August 3, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

Temporary Transfer Review Criteria

- 5. 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.
- 6. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
- 7. The proposed change would not result in enlargement of the right.
- 8. 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(6) 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-11113 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-11113 is approved.
- 2. The former place of use **shall not** be irrigated as part of this water right during the 2009, 2010, 2011, 2012, and 2013 irrigation seasons.
- 3. The use shall revert to the authorized place of use at the end of the 2013 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 22135 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 22135.
- 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 Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.
- 9. The use of the remaining water right described by Certificate 22135 shall continue to be in accordance with the terms and conditions of Certificate 22135.

Dated at Salem, Oregon this $\frac{\xi^{+1}}{\xi}$ day of $\frac{\xi_{2}}{\xi_{1}}$ day of $\frac{\xi_{2}}{\xi_{2}}$, 2010.

Phillip C. Ward, Director

Mailing Date: SEP 0 9 2010