

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-13174, Yamhill County)	TEMPORARY CHANGE IN PLACE OF
)	USE AND IN 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

ACE HOLDINGS, LLC
P.O. BOX 417
GASTON, OR 97119

Findings of Fact

1. On May 1, 2019, ACE HOLDINGS LLC filed an application to temporarily change the place of use and change the point of diversion to serve the proposed place of use under Certificates 19459, 26134, 59987, 59988, 67814 for a period of 5 years. The Department assigned the application number T-13174.
2. Notice of the application for transfer was published on May 7, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 5, 2019, the Department received Affidavits for the Voluntary Cancellation of a Portion of Water Right Certificates 26134 and 59989. The Department will issue remaining right certificates, replacing Certificate 26134 with Certificate 94435. Certificate 59989 has been replaced with the remaining right Certificate 94436.
4. On June 21, 2019, the agent verified in writing that the remaining right Certificates 94435 and 94436 will be used in place of the cancelled certificate numbers 26134 and 59989, throughout the application.

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 July 10, 2019, the Department contacted the agent in writing. A discrepancy between the final proof map and the application Table 1 and corresponding map for Certificate 19459 was discovered. The measured distance listed in the Table and shown on the map did not match the final proof map location for the point of diversion. The Department requested that the Table 1 and corresponding map for said certificate be revised.
6. On July 10, 2019, the agent submitted revised Table 1 and map that match the certificate and final proof map, resolving the discrepancy.
7. The portion of the first right to be temporarily transferred is as follows:

Certificate: 19459 in the name of LEO R. MORRIS (perfected under Permit S-17325)
Use: IRRIGATION of 2.7 ACRES
Priority Date: OCTOBER 17, 1946
Rate: 0.03 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: NORTH YAMHILL RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	GLot	Q-Q
3 S	4 W	WM	5	4	NW SW

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
3 S	4 W	WM	5	NE SW	5	1.7
3 S	4 W	WM	5	NW SW	4	1.0
TOTAL						2.7

4. Transfer application T-13174 proposes to temporarily change the point of diversion of the right to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
3 S	4 W	WM	5	SE SE	41	235 FEET NORTH AND 670 FEET WEST FROM THE SE CORNER OF SECTION 5

5. Transfer application T-13174 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
3 S	4 W	WM	5	NE NE	42	2.7

6. The second right to be temporarily transferred is as follows:

Certificate: 59987 in the name of JACK D. FROST (perfected under Permit S-13289)
Use: IRRIGATION of 20.0 ACRES

Priority Date: SEPTEMBER 14, 1938

Rate: 0.25 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: NORTH YAMHILL RIVER, a tributary of YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
3 S	4 W	WM	5	NW SW	41	1630 FEET NORTH AND 830 FEET EAST FROM THE SW CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
3 S	4 W	WM	5	SW SW	41	0.7
3 S	4 W	WM	5	SE SW	41	14.2
3 S	4 W	WM	8	NE NW	41	3.2
3 S	4 W	WM	8	NW NW	41	1.9
TOTAL						20.0

7. Transfer Application T-13174 proposes to move the authorized point of diversion approximately 1.5 miles (mi.) [upstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
3 S	4 W	WM	5	SE SE	41	235 FEET NORTH AND 670 FEET WEST FROM THE SE CORNER OF SECTION 5

8. Transfer Application T-13174 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
3 S	4 W	WM	4	NW NW	42	12.9
3 S	4 W	WM	5	NE NE	42	7.1
TOTAL						20.0

9. The third right be temporarily transferred is as follows:

Certificate: 59988 in the name of JACK D. FROST (perfected under Permit S-13290)

Use: IRRIGATION of 14.9 ACRES

Priority Date: SEPTEMBER 14, 1938

Rate: 0.19 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: NORTH YAMHILL RIVER, tributary of YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
3 S	4 W	WM	5	NW SW	41	1630 FEET NORTH AND 830 FEET EAST FROM THE SW CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
3 S	4 W	WM	5	NW SW	41	6.9
3 S	4 W	WM	5	SW SW	41	8.0
TOTAL						14.9

10. Transfer Application T-13174 proposes to move the authorized point of diversion approximately 1.5 miles (mi.) upstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
3 S	4 W	WM	5	SE SE	41	235 FEET NORTH AND 670 FEET WEST FROM THE SE CORNER OF SECTION 5

11. Transfer Application T-13174 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	4 W	WM	33	SW SW	38	2.2
3 S	4 W	WM	4	NW NW	42	12.7
TOTAL						14.9

12. The fourth right be temporarily transferred is as follows:

Certificate: 67814 in the name of JACK D. FROST (perfected under Permit S-44558)

Use: IRRIGATION of 16.3 ACRES

Priority Date: DECEMBER 11, 1979

Rate: 0.20 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: NORTH YAMHILL RIVER, tributary of YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
3 S	4 W	WM	5	NW SW	41	1630 FEET NORTH AND 830 FEET EAST FROM THE SW CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
3 S	4 W	WM	5	NE SW	42	0.8
3 S	4 W	WM	5	SW SW	41	3.9
3 S	4 W	WM	5	SE SW	41	1.2
3 S	4 W	WM	5	NW SE	42	0.8
3 S	4 W	WM	5	SW SE	41	0.1
3 S	4 W	WM	5	SW SE	42	0.1
3 S	4 W	WM	6	SE SE	41	2.0
3 S	4 W	WM	8	NE NW	41	2.0
3 S	4 W	WM	8	NW NW	41	5.4
TOTAL						16.3

13. Transfer Application T-13174 proposes to move the authorized point of diversion approximately 1.5 miles (mi.) upstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
3 S	4 W	WM	5	SE SE	41	235 FEET NORTH AND 670 FEET WEST FROM THE SE CORNER OF SECTION 5

14. Transfer Application T-13174 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	4 W	WM	32	SE SE	38	7.1
2 S	4 W	WM	33	SW SW	38	9.2
TOTAL						16.3

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

Certificate: 94435 in the name of HARRY H. WILLIAMS (perfected under Permit S-22244)

Use: IRRIGATION of 23.3 ACRES

Priority Date: APRIL 9, 1953

Rate: 0.22 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: NORTH YAMHILL RIVER, tributary of YAMHILL AND WILLAMETTE RIVERS

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
3 S	4 W	WM	5	NW SW	41

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
3 S	4 W	WM	5	NW SW	41	0.4
3 S	4 W	WM	5	NW SW	41	0.4
3 S	4 W	WM	5	SW SW	41	4.6
3 S	4 W	WM	5	SE SW	41	10.0
3 S	4 W	WM	6	SE SE	41	1.6
3 S	4 W	WM	8	NW NW	41	1.2
TOTAL						17.8

16. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 94435 as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distance
3 S	4 W	WM	5	NW SW	41	1630 FEET NORTH AND 830 FEET EAST FROM THE SW CORNER OF SECTION 5

17. Transfer Application T-13174 proposes to move the authorized point of diversion approximately 1.5 miles (mi.) upstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
3 S	4 W	WM	5	SE SE	41	235 FEET NORTH AND 670 FEET WEST FROM THE SE CORNER OF SECTION 5

18. Transfer Application T-13174 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	4 W	WM	32	SE SE	38	12.5
3 S	4 W	WM	5	NE NE	42	5.3
TOTAL						17.8

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

Certificate: 94436 in the name of JACK D. FROST (perfected under Permit S-13891)
Use: IRRIGATION of 15.1 ACRES
Priority Date: JUNE 27, 1939
Rate: 0.19 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.
Source: NORTH YAMHILL RIVER, tributary to YAMHILL AND WILLAMETTE RIVERS

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
3 S	4 W	WM	5	NW SW	41	1630 FEET NORTH AND 830 FEET EAST FROM THE SW CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
3 S	4 W	WM	5	NE SW	41	1.6
3 S	4 W	WM	5	SE SW	41	1.3
3 S	4 W	WM	5	SW SW	41	8.7
3 S	4 W	WM	6	NE SE	41	0.3
3 S	4 W	WM	6	SE SE	41	3.2
TOTAL						15.1

20. Transfer Application T-13174 proposes to move the authorized point of diversion approximately 1.5 miles (mi.) upstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
3 S	4 W	WM	5	SE SE	41	235 FEET NORTH AND 670 FEET WEST FROM THE SE CORNER OF SECTION 5

21. Transfer Application T-13174 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	4 W	WM	32	SE SE	38	10.2
3 S	4 W	WM	5	NE NE	42	4.9
TOTAL						15.1

22. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 26134 as follows:

Temporary Transfer Review Criteria

23. 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.
24. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
25. The proposed changes would not result in enlargement of the rights.
26. 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.

Partial Cancellation of a Water Right

27. On June 5, 2019, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from the land owner, Greg McCarthy.

The right to be cancelled is as follows:

Certificate: 26134 in the name of HARRY H. WILLIAMS (Perfected under Permit S-22244)
Use: IRRIGATION OF 1.8 ACRES
Priority Date: APRIL 9, 1953
Rate: 0.02 CUBIC FOOT PER SECOND
Source: NORTH YAMHILL RIVER, a tributary of YAMHILL AND WILLAMETTE RIVERS

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
3 S	4 W	WM	5	NW SW	41

Authorized Place of Use to be Cancelled:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
3 S	4 W	WM	5	SW SW	41	1.8

28. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 26134 as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
3 S	4 W	WM	5	NW SW	41	1630 FEET NORTH AND 830 FEET EAST FROM THE SW CORNER OF SECTION 5

29. On June 5, 2019, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Greg McCarthy. The right to be cancelled is as follows:

Certificate: 59989 in the name of JACK D. FROST (perfected under Permit S-13891)
Use: IRRIGATION of 2.1 ACRES
Priority Date: JUNE 27, 1939
Rate: 0.03 CUBIC FOOT PER SECOND
Source: NORTH YAMHILL RIVER, a tributary of YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
3 S	4 W	WM	5	NW SW	41	1630 FEET NORTH AND 830 FEET EAST FROM THE SW CORNER OF SECTION 5

Authorized Place of Use to be Cancelled:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
3 S	4 W	WM	5	SW SW	41	2.1

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-13174 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000, and the portions of the abandoned rights should be cancelled.

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-13174 are approved. The portions of the rights abandoned are cancelled.
2. The former place of use **shall not** be irrigated as part of these water rights during the 2019, 2020, 2021, 2022 and 2023 irrigation seasons.
3. Water Right Certificate 26134 is cancelled. Certificate 94435 will be issued describing that portion of the right not cancelled.
4. Water Right Certificate 59989 is cancelled. Certificate 94436 will be issued describing that portion of the right not cancelled.
5. The use shall revert to the authorized place of use at the end of the 2023 irrigation season. The authorization to use the additional point of diversion shall be terminated concurrently.
6. The approval of this temporary transfer may be revoked or modified if the Department finds the changes cause injury to any existing water right.
7. A subsequent application for permanent transfer of Certificates 19459, 59987, 59988, 67814, 94435 and 94436 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.
8. 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 19459, 59987, 59988, 67814, 94435 and 94436.
9. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
10. 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.
 - 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.

11. The use of the remaining water right(s) described by Certificates 19459, 59987, 59988, 67814, 94435 and 94436 shall continue to be in accordance with the terms and conditions of Certificates 19459, 59987, 59988, 67814, 94435 and 94436.

Dated in Salem, Oregon on AUG 27 2019



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

Mailing Date: AUG 28 2019