

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING TEMPORARY
T-13762, Polk County)	CHANGES IN PLACE OF USE AND
)	ADDITIONAL POINTS 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.

Applicants

KAUER FAMILY FARMS/TRIPLE K FARMS	FARMLAND RESERVE, INC.
DAVE KAUER	PO BOX 2308
7325 SE AMITY DAYTON HWY	PASCO, WASHINGTON 99302
AMITY, OR 97301	

Findings of Fact

1. On July 6, 2021, KAUER FAMILY FARMS/TRIPLE K FARMS, DAVE KAUER, filed an application to temporarily change the place of use and for additional points of diversion to serve the proposed place of use under Certificates 21244, 36427, 37470, 57711, and 58749 for a period of 4 years. The Department assigned the application number T-13762.
2. Notice of the application for transfer was published on July 20, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The first right to be temporarily transferred is as follows:

Certificate: 21244 in the name of LOWELL E. KAUP (perfected under Permit S-14272)
Use: IRRIGATION of 30.0 ACRES
Priority Date: MARCH 30, 1940
Rate: 0.375 CUBIC FOOT PER SECOND

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.

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 LUCKIAMUTE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
9 S	5 W	WM	7	SW NE	51	NONE GIVEN; BOWMAN DLC 51
9 S	5 W	WM	7	NW SE	51	NONE GIVEN; BOWMAN DLC 51
9 S	5 W	WM	7	NE SE	51	NONE GIVEN; BOWMAN DLC 51
9 S	5 W	WM	8	NW SW	51	NONE GIVEN; BOWMAN DLC 51

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
9 S	5 W	WM	7	SW NE	51	10.4
9 S	5 W	WM	7	SE NE	51	1.4
9 S	5 W	WM	7	NE SE	51	8.6
9 S	5 W	WM	7	NW SE	51	4.8
9 S	5 W	WM	8	SW NW	51	3.0
9 S	5 W	WM	8	NW SW	51	1.8
Total:						30.0

4. Temporary Transfer Application T-13762 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
9 S	5 W	WM	7	NW NW	53	11.3
9 S	5 W	WM	7	NE NW	53	5.1
9 S	5 W	WM	7	NW NW	53	8.8
9 S	5 W	WM	7	NE NW	53	4.8
Total:						30.0

5. An additional point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13762 proposes an additional point of diversion approximately 362.0 downstream located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
9 S	5 W	WM	7	SE NW	51	POD #2 – 1725 FEET SOUTH AND 2575 FEET EAST FROM THE NW CORNER OF SECTION 7

6. The portion of the second 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 45.3 ACRES

Priority Date: APRIL 26, 1962

Rate: 0.57 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, 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	Gov Lot	Measured Distances
8 S	5 W	WM	31	NW SW	2	1250 FEET NORTH AND 870 FEET WEST FROM THE NW CORNER OF BOWMAN DLC 55

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
8 S	6 W	WM	31	SW SW		55	3.2
8 S	6 W	WM	31	SW SW	3		2.0
8 S	6 W	WM	31	SE SW		55	3.2
8 S	6 W	WM	36	SW SE		56	1.4
8 S	6 W	WM	36	SW SE	3		2.4
8 S	6 W	WM	36	SE SE			6.5
8 S	6 W	WM	36	NW SE		56	0.1
8 S	6 W	WM	36	NWSE	3		13.5
8 S	6 W	WM	36	NE SE			3.0
8 S	6 W	WM	36	NE SE	3		7.8
8 S	6 W	WM	36	SW NE		56	0.2
9 S	6 W	WM	6	NE NW		39	0.3
9 S	6 W	WM	6	NW NW	1		0.3
9 S	6 W	WM	6	NW NW		39	1.4
Total:							45.3

7. Temporary Transfer Application T-13762 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	5 W	WM	31	NW SE	54	7.2
8 S	5 W	WM	31	NE SW	54	16.0
8 S	5 W	WM	31	NW SW	54	0.6
8 S	5 W	WM	31	SE SW	54	0.1
9 S	5 W	WM	7	NW NW	53	10.9
9 S	5 W	WM	7	NE NW	53	8.6

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
9 S	5 W	WM	7	SW NW	32	1.0
9 S	5 W	WM	7	SE NW	53	0.9
Total:						45.3

8. Additional points of diversion are necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13762 proposes additional points of diversion between approximate 0.1 and 1.9 mile downstream located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
8 S	5 W	WM	31	NW SW	54	POD #1 – 2010 FEET NORTH AND 600 FEET EAST FROM THE SE CORNER OF SECTION 36
9 S	5 W	WM	7	SE NW	53	POD #2 – 1725 FEET SOUTH AND 2575 FEET EAST FROM THE NW CORNER OF SECTION 7

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

Certificate: 37470 in the name of C. J. MOSER (perfected under Permit S-28913)

Use: IRRIGATION of 19.7 ACRES

Priority Date: JULY 24, 1963

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: LITTLE LUCKIAMUTE RIVER, a tributary of LUCKIAMUTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	5 W	WM	31	NW SW	2640 FEET SOUTH AND 880 FEET EAST FROM THE MOST SOUTHERLY SE CORNER OF HART DLC 39

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	6 W	WM	36	SW NE	56	10.5
8 S	6 W	WM	36	SE NW	56	1.6
8 S	6 W	WM	36	NE SW	56	0.2
8 S	6 W	WM	36	NW SE	56	7.4
Total:						19.7

10. Temporary Transfer Application T-13762 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
9 S	5 W	WM	7	SW NW	53	7.5
9 S	5 W	WM	7	SE NW	53	12.2
Total:						19.7

11. Additional points of diversion are necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13762 proposes an additional point of diversion approximately 1.8 mile downstream located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	5 W	WM	7	SE NW	POD #2 - 1725 FEET SOUTH AND 2575 FEET EAST FROM THE NW CORNER OF SECTION 7

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

Certificate: 57711 in the name of J. L. HENDRICKSON (perfected under Permit S-19633)

Use: IRRIGATION of 38.5 ACRES

Priority Date: MARCH 7, 1950

Rate: 0.48 CUBIC FOOT PER SECOND, IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION

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 a diversion of ONE-EIGHTIETH of one cubic foot per second, 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 LUCKIAMUTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
8 S	5 W	WM	31	NW SW	2	2330 FEET NORTH AND 80 FEET EAST FROM THE SW CORNER OF SECTION 31

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
8 S	5 W	WM	31	SW SW	3		1.40
8 S	6 W	WM	36	SE SE			19.50
9 S	5 W	WM	6	NW NW		39	0.10
9 S	5 W	WM	6	NW NW	1	39	9.70
9 S	6 W	WM	1	NE NE	1		7.80
Total:							38.5

13. Temporary Transfer Application T-13762 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	5 W	WM	31	SE NW	54	24.1
8 S	5 W	WM	31	SW NW	54	14.4
Total:						38.5

14. An additional point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13762 proposes an additional point of diversion approximately 362.0 feet downstream located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
8 S	5 W	WM	31	NW SW	54	POD #1 - 2010 FEET NORTH AND 600 FEET EAST FROM THE SW CORNER OF SECTION 31

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

Certificate: 58749 in the name of J L. HENDRICKSON (perfected under Permit S-21626)

Use: IRRIGATION of 29.7 ACRES

Priority Date: JULY 21, 1952

Rate: 0.37 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 a diversion of ONE-EIGHTIETH of one cubic foot per second, 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 LUCKIAMUTE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
8 S	6 W	WM	36	NE NE	1	1280 FEET SOUTH AND 630 FEET WEST FROM THE NE CORNER OF SECTION 36
8 S	5 W	WM	31	NW SW	2	2330 FEET NORTH AND 80 FEET EAST FROM THE SW CORNER OF SECTION 31

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
8 S	5 W	WM	31	SW SW		55	0.30
8 S	5 W	WM	31	SW SW	3		11.10
8 S	6 W	WM	36	SW NE		56	5.3
8 S	6 W	WM	36	SE NW		56	12.50
8 S	6 W	WM	36	NE SW		56	0.50
Total:							29.7

16. Temporary Transfer Application T-13762 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	5 W	WM	31	NW SW	54	10.1
8 S	5 W	WM	31	NE SW	54	18.7
8 S	5 W	WM	31	SE NW	54	0.5
8 S	5 W	WM	31	NW SE	54	0.4
Total:						29.7

17. An additional point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13762 proposes an additional point of diversion approximately 362.0 feet downstream located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
8 S	5 W	WM	31	NW SW	54	POD #1 - 2010 FEET NORTH AND 600 FEET EAST FROM THE SW CORNER OF SECTION 31

Temporary Transfer Review Criteria

18. 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.
19. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights are present.
20. The proposed changes would prevent the lands from which the water right is removed during the period of the temporary transfer from receiving water under the transferred rights, as required by ORS 540.523(7).
21. 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 points of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-13762 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

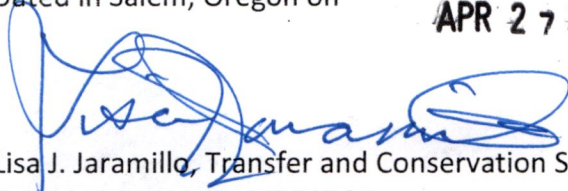
Now, therefore, it is ORDERED:

1. The temporary change in place of use and additional points of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-13762 are approved.
2. The former place of use **shall not** be irrigated as part of these water rights during the 2021, 2022, 2023, and 2024 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2024 irrigation season. The authorization to use the additional points of diversion shall be terminated concurrently.
4. 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.
5. The approval of this temporary transfer may be revoked or modified if the Department finds the changes cause injury to any existing water right.
6. A subsequent application for permanent transfer of Certificates 21244, 36427, 37470, 57711, and 58749 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 Certificates 21244, 36427, 37470, 57711, and 58749.
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 rights described by Certificates 21244, 36427, 37470, 57711, and 58749 shall continue to be in accordance with the terms and conditions of Certificates 21244, 36427, 37470, 57711, and 58749.

Dated in Salem, Oregon on

APR 27 2022



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

Mailing Date:

APR 28 2022