

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING TEMPORARY
T-13252, Clackamas County)	CHANGES IN PLACE OF USE AND
)	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

HELEN HEIDI AFFENTRANGER
16971 SOUTH CLACKAMAS RIVER DRIVE
OREGON CITY, OR 97045

Findings of Fact

1. On September 16, 2019, HELEN HEIDI AFFENTRANGER filed an application to temporarily change the place of use and the point of diversion to serve the proposed place of use under Certificate 29328 for a period of 5 years. The Department assigned the application number T-13252.
2. Notice of the application for transfer was published on September 24, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The applicant included information to the file regarding the from lands, the applicant and the water right holder have an agreement to allow approval of this temporary transfer.
4. On March 24, 2022, the agent for the applicant submitted a revised table 2, correcting the location of the from lands to match the application map.

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 April 4, 2022, the agent for the applicant requested to amend the application changing the date for which the temporary transfer will be in use to 2022, 2023, 2024, 2025, and 2026.

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

Certificate: 29328 in the name of HOWARD S JANSIK (perfected under Permit S-25481)

Use: IRRIGATION of 11.6 ACRES

Priority Date: APRIL 14, 1958

Rate: 0.134 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: CLACKAMAS RIVER a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
2 S	2 E	WM	12	SE SW

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
2 S	2 E	WM	12	NE SW	2	2.0
2 S	2 E	WM	12	SE SW	2	2.4
2 S	2 E	WM	12	NW SE		7.2
Total						11.6

7. The applicant has supplied information that further describes the location of the authorized point of diversion as:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
2 S	2 E	WM	12	SE SW	2	POD 1 – 559.3 FEET NORTH AND 423.3 FEET WEST FORM THE S1/4 CORNER OF SECTION 12

8. Temporary Transfer Application T-13252 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
2 S	2 E	WM	14	NE NE	1	11.6

9. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13252 proposes to move the authorized point of diversion approximately 3000 feet WEST (downstream) to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
2 S	2 E	WM	14	NE NE	1	POD 2 – 250 FEET SOUTH AND 500 FEET WEST FROM THE NE CORNER OF SECTION 14

Temporary Transfer Review Criteria

10. 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.
11. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
12. 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 right, as required by ORS 540.523(7).
13. 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.
14. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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-13252 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 change in point of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-13252 are approved.
2. The former place of use **shall not** be irrigated as part of this water right during the 2022, 2023, 2024, 2025 and 2026 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2026 irrigation season. The authorization to use the additional 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. The quantity of water diverted at the proposed temporary point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
6. A subsequent application for permanent transfer of Certificate 29328 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 29328.
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. 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 the point of diversion.
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring devices; provided however, where the meter or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.

10. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards
11. The use of the remaining water right described by Certificate 29328 shall continue to be in accordance with the terms and conditions of Certificate 29328.

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