

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-11041, Umatilla County) DISTRICT TEMPORARY TRANSFER

Authority

ORS 540.570 establishes the process in which a district may submit a request to temporarily transfer a water right within district boundaries. OAR Chapter 690, Division 385 implements the statutes and provides the Department’s procedures and criteria for evaluating district transfer applications.

Applicant

Butter Creek Irrigation District
PO Box 110
Hermiston, OR 97838

Findings of Fact

1. On March 22, 2010, Butter Creek Irrigation District filed a district transfer application to temporarily change the place of use under Certificates 80705, 81408, 81409 and 63802. The Department assigned the application number T-11041.
2. Notice of the application for transfer was published pursuant to ORS 540.580 and OAR 690-385-3400. No comments were filed in response to the notice.
3. The portion of the first primary right and its layered supplemental water rights to be transferred are as follows:

Certificate: 80705, issued in the name of Butter Creek Irrigation District (confirmed by the Butter Creek Decree)

Use: Irrigation of 12.5 acres

Priority Date: 1896

Quantity: 0.24 cubic foot per second (cfs)

Source: BUTTER CREEK, tributary to the Umatilla River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 N	27 E	WM	2	NE SE	50 feet South and 350 feet West from the E¼ Corner of Section 2

This is a final order in other than 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 either 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.

Certificate: 81408, issued in the name of Hale Brothers Farms (perfected under Permit G-434)

Use: Supplemental Irrigation of 12.5 acres

Priority Date: January 21, 1957

Quantity: 0.13 cubic foot per second (cfs)

Rate & Duty: ONE-EIGHTIETH of one cubic foot per second for each acre irrigated and further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year

Source: Ammon Well #2, Hale SR. Well, and Hanson Well #1, within the Butter Creek Basin.

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 N	27 E	WM	2	NE SE	Ammon Well #2 - 100 feet South and 130 feet West from the E $\frac{1}{4}$ Corner of Section 2
2 N	27 E	WM	12	NW NW	Hanson Well #1 - 10 feet South and 10 feet East from the NW Corner of Section 12
2 N	28 E	WM	7	NE NE	Hale Sr. Well - 1040 feet South and 440 feet West from the NE Corner of Section 7

Authorized Places of Use:

IRRIGATION (IR) AND SUPPLEMENTAL IRRIGATION (IS)								
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	CERTIFICATE (acres)		User
						80705 (IR)	81408 (IS)	
2 N	27 E	WM	1	NW SW	200	4.0	4.0	HALE BROS. FARMS
2 N	27 E	WM	2	SE NE	200	0.7	0.7	HALE BROS. FARMS
2 N	27 E	WM	2	NE SE	200	1.8	1.8	HALE BROS. FARMS
2 N	27 E	WM	2	NW SE	200	6.0	6.0	HALE BROS. FARMS
TOTAL:						12.5*	12.5*	

*Note: Permit S-46499 exists on these "FROM" lands described in the table above and the season of use has expired. The applicant has confirmed that Permit S-46499 will not be used or transferred during the 2010 irrigation season.

4. Transfer Application T-11041 proposes to TEMPORARILY change the place of use of the above described rights to:

Proposed Places of Use:

IRRIGATION (IR) AND SUPPLEMENTAL IRRIGATION (IS)								
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	CERTIFICATE (acres)		User
						80705 (IR)	81408 (IS)	
2 N	28 E	WM	5	NW NW	900	12.5	12.5	HALE BROS. FARMS

* Note: The applicant has stated the acres in the table above being transferred in will become supplemental to Permit S-51017 (as modified by T-9540) existing on the "TO" lands during the 2010 irrigation season.

5. The portion of the second primary right to be transferred is as follows:
Certificate: 81408, issued in the name of Hale Brothers Farms (perfected under Permit G-434)

Use: Irrigation of 87.0 acres

Priority Date: January 21, 1957

Quantity: 0.83 cubic foot per second (cfs)

Source: Ammon Well #2, Hale Sr. Well, and Hanson Well #1 within the Butter Creek Basin.

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 N	27 E	WM	2	NE SE	Ammon Well #2 - 100 feet South and 130 feet West from the E $\frac{1}{4}$ Corner of Section 2
2 N	27 E	WM	12	NW NW	Hanson Well #1 - 10 feet South and 10 feet East from the NW Corner of Section 12
2 N	28 E	WM	7	NE NE	Hale Sr. Well - 1040 feet South and 440 feet West from the NE Corner of Section 7

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres	User
2 N	27 E	WM	1	NE NE	100	11.22	HALE BROS. FARMS
2 N	27 E	WM	1	SW NE	100	0.81	HALE BROS. FARMS
2 N	27 E	WM	1	SE NE	100	7.39	HALE BROS. FARMS
2 N	27 E	WM	1	NE SE	100	0.30	HALE BROS. FARMS
2 N	27 E	WM	1	NW SE	100	17.22	HALE BROS. FARMS
2 N	27 E	WM	2	SW NE	100	6.70	HALE BROS. FARMS
2 N	27 E	WM	2	SE NE	100	24.56	HALE BROS. FARMS
2 N	27 E	WM	2	NE SE	100	1.20	HALE BROS. FARMS
2 N	27 E	WM	2	NW SE	100	17.60	HALE BROS. FARMS
TOTAL:						87.00	

6. Transfer Application T-11041 proposes to TEMPORARILY change the place of use of the right to:

Proposed Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres	User
2 N	28 E	WM	5	NE SW	900	27.50*	HALE BROS. FARMS
2 N	28 E	WM	5	NW SW	900	27.50*	HALE BROS. FARMS
2 N	28 E	WM	5	SW SW	900	4.50*	HALE BROS. FARMS
2 N	28 E	WM	5	SE SW	900	27.50*	HALE BROS. FARMS
TOTAL:						87.00	

*Note: The applicant has requested to diminish use under Certificate 81408 in the above table to supplemental irrigation to Permit S-51017(as modified by T-9540) existing on these lands during the 2010 irrigation season.

7. The portion of the third primary right to be transferred is as follows:
Certificate: 81409, issued in the name of Hale Brothers Farms (perfected under Permit G-1227)
Use: Irrigation of 47.5 acres
Priority Date: January 21, 1959

Quantity: 0.36 cubic foot per second (cfs)

Rate & Duty: ONE-EIGHTIETH of one cfs not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year

Source: AMMON WELL #2, HALE SR. WELL, and HANSON WELL #1, within the UMATILLA RIVER BASIN.

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 N	27E	WM	12	NW NW	Hanson Well #1 - 10 feet South and 10 feet East from the NW Corner of Section 12
2 N	27 E	WM	2	NE SE	Ammon Well #2 - 100 feet South and 130 feet West from the E¼ Corner of Section 9
2 N	28 E	WM	7	NE NE	Hale Sr. Well – 1040 feet South and 440 feet West from the NE Corner of Section 7

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres	User
2 N	27 E	WM	1	SE SW	404	2.50	HALE BROS. FARMS
2 N	27 E	WM	1	SW SE	404	13.50	HALE BROS. FARMS
2 N	27 E	WM	2	SW SE	401	10.00	HALE BROS. FARMS
2 N	27 E	WM	12	NW NE	400	1.50	HALE BROS. FARMS
2 N	27 E	WM	12	NE NW	404 & 400	20.00	HALE BROS. FARMS
TOTAL:						47.50	

8. Transfer Application T-11041 proposes to change the place of use of the right to:

Proposed Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres	User
2 N	28 E	WM	5	SW NW	900	22.50*	HALE BROS. FARMS
2 N	28 E	WM	5	SE NW	900	25.00*	HALE BROS. FARMS
TOTAL:						47.50	

*Note: The applicant has requested to diminish use under Certificate 81409 in the table above to supplemental irrigation to Permit S-51017(as modified by T-9540) existing on these lands during the 2010 irrigation season.

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

Certificate: 63802, issued in the name of Hale Bothers Farms (confirmed by the Butter Creek Decree)

Use: Irrigation of 40.0 acres

Priority Date: 1896

Rate & Duty: 0.78 cubic foot per second not to exceed 4.0 acre-feet per acre during the irrigation season of each year

Source: Butter Creek, a tributary of the Umatilla River

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 N	27 E	WM	11	SW NE	1330 feet South and 270 feet East from the N¼ Corner of Section 11
2 N	27E	WM	11	SE SW	970 feet North and 450 feet West from the S¼ Corner of Section 11

Authorized Places of Use:

IRRIGATION (IR) AND SUPPLEMENTAL IRRIGATION (IS)							
Twp	Rng	Mer	Sec	Q - Q	Tax Lots	Acres	User
2 N	27 E	WM	11	NE SW	1400, 1401	40.0	HALE BROS. FARMS

***Note:** The applicant has stated that Permit S-46499 exists on the "FROM" lands described in the table above and the season of use has expired. The applicant has confirmed that Permit S-46499 will not be used or transferred during the 2010 irrigation season.

10. Transfer Application T-11041 proposes to change the place of use of the right to:

Proposed Place of Use:

IRRIGATION (IR)							
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres	User
2 N	28 E	WM	5	NE NW	900	25.0*	HALE BROS. FARMS
2 N	28 E	WM	5	NW NW	900	15.0*	HALE BROS. FARMS
TOTAL:						40.0*	

***Note:** The applicant has requested to diminish use under Certificate 63802 in the table above to supplemental irrigation to existing Permit 51017 (as modified by T-9540) during the 2010 irrigation season.

11. The portion of the fifth right and its layered supplemental water right to be transferred are as follows:

Certificate: 63802, issued in the name of Hale Bothers Farms (confirmed by the Butter Creek Decree)

Use: Irrigation of 23.0 acres

Priority Date: 1896

Rate & Duty: 0.45 cubic foot per second (cfs) not to exceed 4.0 acre-feet per acre during the irrigation season of each year

Source: Butter Creek, a tributary of the Umatilla River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 N	27 E	WM	11	SW NE	1330 feet South and 270 feet East from the N¼ Corner of Section 11

Certificate: 81409, issued in the name of Hale Brothers Farms (perfected under Permit G-1227)

Use: Supplemental Irrigation of 23.0 acres

Priority Date: January 21, 1959

Quantity: 0.18 cubic foot per second (cfs)

Rate & Duty: ONE-EIGHTIETH of one cfs not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year

Source: AMMON WELL #2, HALE SR. WELL, and HANSON WELL #1, within the UMATILLA RIVER BASIN.

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 N	27E	WM	12	NW NW	Hanson Well #1 - 10 feet South and 10 feet East from the NW Corner of Section 12
2 N	27 E	WM	2	NE SE	Ammon Well #2 - 100 feet South and 130 feet West from the E ¹ / ₄ Corner of Section 9
2 N	28 E	WM	7	NE NE	Hale Sr. Well - 1040 feet South and 440 feet West from the NE Corner of Section 7

Authorized Places of Use:

IRRIGATION (IR) AND SUPPLEMENTAL IRRIGATION (IS)								
Twp	Rng	Mer	Sec	Q - Q	TAX LOT	CERTIFICATE (acres)		User
						63802 (IR)	81409 (IS)	
2 N	27 E	WM	2	SW SE	401	23.0	23.0	HALE BROS. FARMS

12. Transfer Application T-11041 proposes to change the places of use of the rights to:

Proposed Places of Use:

IRRIGATION (IR) AND SUPPLEMENTAL IRRIGATION (IS)								
Twp	Rng	Mer	Sec	Q - Q	TAX LOT	CERTIFICATE (acres)		User
						63802 (IS)	81409 (IS)	
2 N	28 E	WM	5	SW SW	900	23.0	23.0	HALE BROS. FARMS

***Note:** The applicant has requested to diminish both incoming rights on the lands listed in the above table to supplemental irrigation to existing Permit S-51017 (as modified by T-9540) during the 2010 irrigation season.

- 13. The water rights are subject to transfer as defined in OAR 690-385-0100(17).
- 14. The proposed changes in place of use would not result in enlargement of the rights.
- 15. The proposed changes would not result in injury to other water rights.

Conclusions of Law

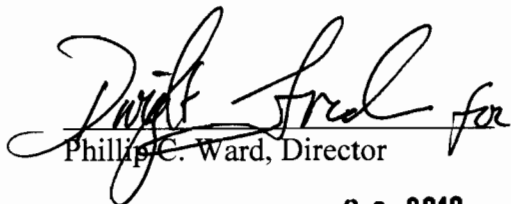
The TEMPORARY changes as proposed in Transfer Application T-11041 satisfy the requirements of ORS 540.574(3) and 540.570.

Now, therefore, it is ORDERED:

- 1. The temporary changes proposed in Transfer Application T-11041 are approved.
- 2. The former places of use **shall not** be irrigated as part of these water rights during the 2010 irrigation season.
- 3. The use shall revert to the authorized place of use at the end of the 2010 irrigation season.

4. The water use on the specified, proposed "TO" lands, as further described in Findings of Fact #4, #6, #8, #10 and #12, will be diminished to supplemental irrigation to water use Permit S-51017 (as modified by T-9540) during the course of the 2010 irrigation season.
5. The right to the use of the water is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in Certificates 80705, 81408, 81409 and 63802 and any related decree.
6. The use of water on the lands from which the water right is transferred and at the new temporary place of use during the same irrigation season or calendar year is prohibited and may subject the district and landowner to civil penalties.
7. The water user and/or district shall maintain and operate the existing measurement devices and shall make such improvements as may be required by the Department.
8. The use of water under this temporary transfer may be conditioned or revoked at any time to the extent necessary to avoid injury if the Department finds the transfer causes injury to any existing water right.
9. A subsequent application for permanent transfer of Certificates 80705, 81408, 81409 and 63802 shall be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380 and 385. Approval of this temporary transfer does not establish a precedent for approval of a subsequent application filed for a permanent transfer.
10. 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 80705, 81408, 81409 and 63802.
11. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
12. The use of the remaining water rights described by Certificates 80705, 81408, 81409 and 63802 shall continue to be in accordance with the terms and conditions of Certificates 80705, 81408, 81409 and 63802.

Dated at Salem, Oregon this 18 day of May, 2010.


Phillip C. Ward, Director

Mailing Date: MAY 20 2010