

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-11149, Umatilla County) CHANGE IN PLACE OF USE

Authority

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, place of use, or character of use 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

Hale Farms, LLC
73120 Highway 207
Echo, OR 97826

Agents

Willam Porfily
P.O. Box 643
Stanfield, OR 97875

David Filippi
900 SW Fifth Ave. Ste 2600
Portland, OR 97204

Findings of Fact

Background

1. On October 29, 2010, Hale Farms, LLC, filed an application to change the place of use under the portions of Certificates 54559, 80428 and T-8070 that were involved in T-10692. The Department assigned the application number T-11149.
2. On November 18, 2010, Certificates 86679 and 86680 were issued to confirm the perfection of Transfer T-10692, thereby making the rights subject to transfer.
3. The first right to be transferred is as follows:

Certificate: 86679 in the name of Hale Farms LLC (perfected under Permit G-5335)

Use: IRRIGATION of 250.0 ACRES

Priority Date: JULY 19, 1974

Rate: 1.17 CUBIC FEET PER SECOND or its equivalent in case of rotation, measured at the wells.

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-

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, 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.

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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. The irrigation season used herein shall include any time of each year that water can be put to beneficial use by irrigation, either for immediate crop growth or for forecast requirements to raise the soil moisture to field capacity in the soil profile to be utilized by plant growth in the subsequent growing season, provided the amount of water used at the authorized place of use, together with the amount of water approved for use under Certificate 86680 shall not exceed 1.86 cubic feet per second and 1,014.56 acre-feet per year, which reflect the capacity of the well system at the time of perfection attributable to the rights modified by T-10692.

The quantity of water diverted at the new points of appropriation (wells), together with the quantity diverted from the original point of appropriation, REW Well #1, shall not exceed the quantity of water lawfully available from the original point of appropriation. The quantity of water allowed to be diverted from REW WELL #1 for the rights perfected under Permits G-5335 and G-5337 is limited to a quantity of water not to exceed 2.0 cubic feet per second, the capacity of the well system at the time of perfection of the rights.

Source: SIX WELLS within the UMATILLA RIVER BASIN

Authorized Points of Appropriation:

WELL NAME	TWP	RNG	MER	SEC	Q-Q	MEASURED DISTANCES
HALE #8	3N	29E	WM	14	SW NW	1350 FEET SOUTH AND 50 FEET WEST FROM THE NE CORNER OF THE NW1/4 NW1/4 OF SECTION 14
COPPINGER #3	3N	29E	WM	23	SE NE	3960 FEET NORTH AND 1320 FEET WEST FROM THE SE CORNER OF SECTION 23
COPPINGER #1	3N	29E	WM	24	SW NE	20 FEET NORTH AND 1490 FEET WEST FROM THE E1/4 CORNER OF SECTION 24
HALE #3	3N	30E	WM	7	SW SW	1420 FEET SOUTH AND 40 FEET EAST FROM THE W1/4 CORNER OF SECTION 7
DITCHENS LAND CO. #2	3N	30E	WM	20	SW SW	80 FEET EAST FROM THE SW CORNER OF SECTION 20
DITCHENS LAND CO. #1	3N	30E	WM	30	NE SW	30 FEET SOUTH AND 640 FEET WEST FROM THE C 1/4 CORNER OF SECTION 30

- The Department became aware of a scrivener's error in the description of the location for Ditchens Land Co. #2 well in Certificate 86679 (stemming from an original scrivener's error in the T-10692 application that was carried forward into the certificate). This well is listed correctly on Certificate 84095 as:

WELL NAME	TWP	RNG	MER	SEC	Q-Q	MEASURED DISTANCES
DITCHENS LAND CO. #2	3N	30E	WM	20	SW SW	100 FEET NORTH AND 80 FEET EAST FROM THE SW CORNER OF SECTION 20

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	30 E	WM	5	SE SW	3.35
3 N	30 E	WM	7	NE SE	29.10
3 N	30 E	WM	7	NW SE	28.50
3 N	30 E	WM	7	SW SE	28.90
3 N	30 E	WM	7	SE SE	31.30
3 N	30 E	WM	8	NE NW	30.50
3 N	30 E	WM	8	NW NW	31.40
3 N	30 E	WM	8	SW NW	31.20
3 N	30 E	WM	8	SE NW	30.70
3 N	30 E	WM	8	NE SW	5.05
Total Acres:					250.00

5. Transfer Application T-11149 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	29 E	WM	23	NE SE	30.9
3 N	29 E	WM	23	NW SE	33.1
3 N	29 E	WM	23	SW SE	31.4
3 N	29 E	WM	23	SE SE	32.7
3 N	29 E	WM	24	NE NW	11.8
3 N	29 E	WM	24	NW NW	6.0
3 N	29 E	WM	24	SW NW	38.5
3 N	29 E	WM	24	SE NW	25.4
3 N	29 E	WM	24	NE SW	19.8
3 N	29 E	WM	24	NW SW	20.4
Total Acres:					250.0

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

Certificate: 86680 in the name of Hale Farms LLC (perfected under Permit G-5337)

Use: IRRIGATION of 120.45 ACRES

Priority Date: OCTOBER 21, 1974

Rate: 1.25 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 per acre, or its equivalent for each acre irrigated, and shall be 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, provided the amount of water used at the authorized place of use, together with the amount of water approved for use under Certificate 86679 shall not exceed 1.86 cubic feet per second and 1,014.56 acre-feet per year, which reflect the capacity of the well system at the time of perfection attributable to the rights modified by T-10692.

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COPPINGER #1	3N	29E	WM	24	SW NE	20 FEET NORTH AND 1490 FEET WEST FROM THE E 1/4 CORNER OF SECTION 24
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DITCHENS LAND CO. #1	3N	30E	WM	30	NE SW	30 FEET SOUTH AND 640 FEET WEST FROM THE C 1/4 CORNER OF SECTION 30

7. The Department became aware of a scrivener's error in the description of the location for Ditchens Land Co. #2 well in Certificate 86679 (stemming from an original scrivener's error in the T-10692 application that was carried forward into the certificate). This well is listed correctly on Certificate 84095 as:

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DITCHENS LAND CO. #2	3N	30E	WM	20	SW SW	100 FEET NORTH AND 80 FEET EAST FROM THE SW CORNER OF SECTION 20

Authorized Place of Use:

TWP	RNG	MER	SEC	Q-Q	ACRES
3N	30E	WM	5	NE SW	29.80
3N	30E	WM	5	NW SW	28.20
3N	30E	WM	5	SW SW	34.00
3N	30E	WM	5	SE SW	28.45
TOTAL:					120.45

8. Transfer Application T-11149 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	29 E	WM	13	SW SW	6.50
3 N	29 E	WM	13	SE SW	6.30
3 N	29 E	WM	24	NE NW	23.30
3 N	29 E	WM	24	NW NW	34.00
3 N	29 E	WM	24	SE NW	12.10
3 N	30 E	WM	6	NE SE	9.10
3 N	30 E	WM	6	SE SE	29.15
Total Acres:					120.45

9. Notice of the application for transfer was published on November 23, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
10. On January 24, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11149 to the applicant and agents. The draft Preliminary Determination set forth a deadline of February 24, 2011, for the applicant to respond. The agent provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer and requested and requested modifications to correct scrivener's errors in the draft document.
11. On February 25, 2011, the Department e-mailed a copy of a revised draft Preliminary Determination for Transfer Application T-11149 to the applicant and agent. The agent reviewed the revised draft, noted one further scrivener's error (which has been corrected in this document) and requested that the Department proceed with issuance of a Preliminary Determination.
12. On March 8, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11149 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on March 15, 2011, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Transfer Review Criteria (OAR 690-380-4010)

13. Water has been used within the last five years prior to the submittal of Transfer Application T-11149 according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
14. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11149.
15. The proposed change would not result in enlargement of the rights.
16. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in place of use proposed in Transfer Application T-11149 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in application T-11149 is approved.
2. 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 86679 and 86680 and any related decree.
3. Water right certificates 86679 and 86680 are cancelled.
4. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
5. The former place of use of the transferred rights shall no longer receive water under the rights.
6. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.
7. When satisfactory proof of the completed change is received, new certificates confirming the rights transferred will be issued, and correcting the location of Ditchens Land Co. #2 Well.

Dated at Salem, Oregon this 15 day of April, 2011.



Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing date: APR 21 2011