

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

In the Matter of Transfer Application) **F I N A L O R D E R**
T-10586, Umatilla County) APPROVING A 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
P.O. Box 110
Hermiston, OR 97838

Findings of Fact

1. On March 31, 2008, Butter Creek Irrigation District filed a district transfer application to temporarily change the place of use under Certificates 80705, 81408, 81409, 63802 and water use Permit S-46499. The Department assigned the application number T-10586.
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 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 13.6 acres

Priority Date: 1896

Quantity: 0.26 cubic foot per second (cfs)

Source: BUTTER CREEK, tributary to the Umatilla River

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.

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
2 N	27 E	WM	2	NE SE	50 feet South and 350 feet West from the E $\frac{1}{4}$ Corner of Section 2

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

Use: Supplemental Irrigation of 13.6 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	Survey Coordinates
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

Permit: S-46499, issued in the name of John Madison, Agent for Frank N. Mueller, Top Cut Feedlots, Inc. by Brent Horn, Lowell Saylor, John Madison, Madison Ranches, Inc. by Gaylord Madison, Frank Pedro, Clausie H. Ammon by Bob Hale, Douglas Hale, Glenn Cochran, Jerry Myers, Mike McCarty, Ed Johnson, Frank Mader, Bob Hawkins, Bud Graham, Edward Burl Wattenburger, Jr., Earl W. Wattenburger by Eldon Witherrite, Leo Ashbeck, John B. Correa, Sidney R. Britt and Mabel Vey

Use: Supplemental Irrigation of 13.6 acres

Season: the use allowed herein may be made at any time between September 2 and December 30 of each year that water can be put to beneficial use by irrigation either for immediate crop growth or for forecast requirements to raise soil moisture to field capacity in the soil profile to be utilized by plant growth in the subsequent growing season, and is limited to a the amount of water which can be applied to beneficial use

Priority Date: October 16, 1978

Rate & 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-FIFTIETH of one cubic foot per second per acre, from direct flow and shall be further limited to a diversion of not to exceed 1.0 acre-foot per acre for each acre irrigated during the period from September 2 and December 30 of each year and shall not exceed 4.0 acre-feet for each acre irrigated in any one year.

Source: Butter Creek, a tributary of the Umatilla River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
2 N	27 E	WM	2	NE SE	Diversion #H - 50 feet South and 350 feet West from the E $\frac{1}{4}$ Corner of Section 2

Authorized Places of Use:

Certificate 80705 Primary Irrigation - Certificate 81408 Supplemental Irrigation and Permit S-46499 Supplemental Irrigation							
Twp	Rng	Mer	Sec	Q - Q	TL	Acres	User
2 N	27 E	WM	1	NW SW	200	4.0	HALE BROTHERS FARMS
2 N	27 E	WM	2	SE NE	200	0.7	HALE BROTHERS FARMS
2 N	27 E	WM	2	NE SE	200	2.9	HALE BROTHERS FARMS
2 N	27 E	WM	2	NW SE	200	6.0	HALE BROTHERS FARMS
TOTAL:						13.6	

4. Transfer Application T-10586 proposes to TEMPORARILY change the place of use of the rights to:

Proposed Place of Use:

Certificate 80705 Primary Irrigation - Certificate 81408 Supplemental Irrigation and Permit S-46499 Supplemental Irrigation							
Twp	Rng	Mer	Sec	Q - Q	TL	Acres	User
3 N	28 E	WM	32	NW SW	9000	13.6*	HALE BROTHERS FARMS

*The applicant has requested to diminish use under Certificate 80705 for the lands listed above to supplemental irrigation during the 2008 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 72.94 acres

Priority Date: January 21, 1957

Quantity: 0.70 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	Survey Coordinates
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	Acres
2 N	27 E	WM	1	NE NE	11.22
2 N	27 E	WM	1	SW NE	0.81
2 N	27 E	WM	1	SE NE	7.39
2 N	27 E	WM	1	NE SE	0.30
2 N	27 E	WM	1	NW SE	17.22
2 N	27 E	WM	2	SW NE	6.70
2 N	27 E	WM	2	SE NE	10.50
2 N	27 E	WM	2	NE SE	1.20
2 N	27 E	WM	2	NW SE	17.60

6. Transfer Application T-10586 proposes to TEMPORARILY change the place of use of the right to:

Proposed Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q - Q	TL	Acres	User
3 N	28 E	WM	32	NW SW	9000	3.16*	HALE BROTHERS FARMS
3 N	28 E	WM	32	SW SW	9000	27.50*	HALE BROTHERS FARMS
3 N	28 E	WM	32	SE SW	9000	27.50*	HALE BROTHERS FARMS
3 N	28 E	WM	32	SE SE	9000	14.78*	HALE BROTHERS FARMS

*The applicant has requested to diminish use under Certificate 81408 for the lands listed above to supplemental irrigation during the 2008 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-434)

Use: Irrigation of 47.5 acres

Priority Date: January 21, 1959

Rate & Duty: ONE-EIGHTIETH of one cubic foot per second provided further that the allowed herein for supplemental irrigation shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed therein.

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	Survey Coordinates
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 9
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	Acres	User
2 N	27 E	WM	1	SE SW	2.5	HALE BROTHERS FARMS
2 N	27 E	WM	1	SW SE	13.5	HALE BROTHERS FARMS
2 N	27 E	WM	2	SW SE	10.0	HALE BROTHERS FARMS
2 N	27 E	WM	12	NW SW	1.5	HALE BROTHERS FARMS
2 N	27 E	WM	12	NE NW	20.0	HALE BROTHERS FARMS

8. Transfer Application T-10586 proposes to change the place of use of the right to:

Proposed Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q - Q	TL	Acres	User
3 N	28 E	WM	32	NE SW	9000	27.50*	HALE BROTHERS FARMS
3 N	28 E	WM	32	NW SW	9000	10.54*	HALE BROTHERS FARMS
3 N	28 E	WM	32	NW SE	9000	9.46*	HALE BROTHERS FARMS

*The applicant has requested to diminish use under Certificate 81409 for the lands listed above to supplemental irrigation during the 2008 irrigation season.

9. The portion of the fourth right and its supplemental water 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	Survey Coordinates
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

Permit: S- 46499, issued in the names of John Madison, Agent for Frank N. Mueller, Top Cut Feedlots, Inc. by Brent Horn, Lowell Saylor, John Madison, Madison Ranches, Inc. by Gaylord Madison, Frank Pedro, Clausie H. Ammon by Bob Hale, Douglas Hale, Glenn Cochran, Jerry Myers, Mike McCarty, Ed Johnson, Frank Mader, Bob Hawkins, Bud Graham, Edward Burl Wattenburger, Jr., Earl W. Wattenburger by Eldon Witherrite, Leo Ashbeck, John B. Correa, Sidney R. Britt and Mabel Vey

Use: Supplemental Irrigation of 40.0 acres

Season: the use allowed herein may be made at any time between September 2 and December 30 of each year that water can be put to beneficial use by irrigation either for immediate crop growth or for forecast requirements to raise soil moisture to field capacity in the soil profile to be utilized by plant growth in the subsequent growing season, and is limited to a the amount of water which can be applied to beneficial use

Priority Date: October 16, 1978

Rate & 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-FIFTIETH of one cubic foot per second per acre, from direct flow and shall be further limited to a diversion of not to exceed 1.0 acre-foot per acre for each acre irrigated during the period from September 2 and December 30 of each year and shall not exceed 4.0 acre-feet for each acre irrigated in any one year.

Source: Butter Creek, a tributary of the Umatilla River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
2 N	27 E	WM	2	NE SE	Diversion #H - 50 feet South and 350 feet West from the E $\frac{1}{4}$ Corner of Section 2

Authorized Places of Use:

Certificate 63802 – Primary Irrigation & Permit S-46499 – Supplemental Irrigation					
Twp	Rng	Mer	Sec	Q - Q	Acres
2 N	27 E	WM	11	NE SW	40.0

10. Transfer Application T-10586 proposes to change the place of use of the rights to:

Proposed Places of Use:

Certificate 63802 – Primary Irrigation & Permit S-46499 – Supplemental Irrigation							
Twp	Rng	Mer	Sec	Q - Q	TL	Acres	User
2 N	28 E	WM	5	NE SE	9000	27.5*	HALE BROTHERS FARMS
2 N	28 E	WM	5	NW SE	9000	7.26*	HALE BROTHERS FARMS
2 N	28 E	WM	5	SE SE	9000	5.24*	HALE BROTHERS FARMS
TOTAL:						40.0	

*The applicant has requested to diminish use under Certificate 63802 for the lands listed above to supplemental irrigation during the 2008 irrigation season.

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

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

Use: Irrigation (IR) of 45.76 acres

Priority Date: 1896

Rate & Duty: 0.89 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 Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
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-434)

Use: Irrigation of 45.76 acres

Priority Date: January 21, 1959

Quantity: 0.35 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 #1, 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	Survey Coordinates
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	27E	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

Permit: S-46499, issued in the names of John Madison, Agent for Frank N. Mueller, Top Cut Feedlots, Inc. by Brent Horn, Lowell Saylor, John Madison, Madison Ranches, Inc. by Gaylord Madison, Frank Pedro, Clausie H. Ammon by Bob Hale, Douglas Hale, Glenn Cochran, Jerry Myers, Mike McCarty, Ed Johnson, Frank Mader, Bob Hawkins, Bud Graham, Edward Burl Wattenburger, Jr., Earl W. Wattenburger by Eldon Witherrite, Leo Ashbeck, John B. Correa, Sidney R. Britt and Mabel Vey

Use: Supplemental Irrigation of 45.76 acres

Season; the use allowed herein may be made at any time between September 2 and December 30 of each year that water can be put to beneficial use by irrigation either for immediate crop growth or for forecast requirements to raise soil moisture to field capacity in the soil profile to be utilized by plant growth in the subsequent growing season, and is limited to a the amount of water which can be applied to beneficial use

Priority Date: October 16, 1978

Rate & 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-FIFTIETH of one cubic foot per second per acre, from direct flow and shall be further limited to a diversion of not to exceed 1.0 acre-foot per acre for each acre irrigated during the period from September 2 and December 30 of each year and shall not exceed 4.0 acre-feet for each acre irrigated in any one year.

Source: Butter Creek, a tributary of the Umatilla River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
2 N	27 E	WM	2	NE SE	Diversion #H - 50 feet South and 350 feet West from the E¼ Corner of Section 2

Authorized Places of Use:

Certificate 63802 – Primary Irrigation - Certificate 81409 Supplemental Irrigation and Permit S-46499 Supplemental							
Twp	Rng	Mer	Sec	Q - Q	TL	Acres	User
2 N	27 E	WM	1	SW SE	404	1.76*	HALE BROTHERS FARMS
2 N	27 E	WM	2	SW SE	401	23.00*	HALE BROTHERS FARMS
2 N	27 E	WM	11	NW NE	401	21.00*	HALE BROTHERS FARMS
TOTAL:						45.76	

12. Transfer Application T-10586 proposes to change the places of use of the rights to:

Proposed Places of Use:

Certificate 63802 (IR) - Certificate 81409 Supplemental Irrigation and Permit S-46499 Supplemental Irrigation							
Twp	Rng	Mer	Sec	Q - Q	TL	Acres	User
2 N	28 E	WM	5	NW SE	9000	10.78*	HALE BROTHERS FARMS
2 N	28 E	WM	5	SW SE	9000	27.50*	HALE BROTHERS FARMS
2 N	28 E	WM	5	SE SE	9000	7.48*	HALE BROTHERS FARMS
TOTAL:						45.76	

*The applicant has requested to diminish use under Certificate 63802 for the lands listed above to supplemental irrigation during the 2008 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 proposed TEMPORARY changes proposed in Transfer Application T-10586 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-10586 are approved.
2. The former places of use **shall not** be irrigated as part of these water rights during the 2008 irrigation season.
3. The use shall revert to the authorized place of use at the end of the 2008 irrigation season.

4. The specified water use on the proposed "TO" lands described in Findings of Fact #4, #6, #8, #10 and #12 will be diminished to supplemental irrigation to water use Permit S-51017 during the course of the 2008 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, 63802 and water use Permit S-46499 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 device 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, 63802 and water use Permit S-46499 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.
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 and water use Permit S-46499.
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, 63802 and Permit S-46499 shall continue to be in accordance with the terms and conditions of Certificates 80705, 81408, 81409, 63802 and Permit S-46499.

Dated at Salem, Oregon this 19th day of June, 2008.


R. Phillip C. Ward, Director

Mailing Date: JUN 25 2008