

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-12449, Umatilla County)	TEMPORARY CHANGE IN PLACE OF
)	USE AND A CHANGE IN POINT OF
)	APPROPRIATION

Authority

Oregon Revised Statute (ORS) 537.705 and 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 appropriation 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

BROKEN SPUR RANCH, LLC
30522 OLDFIELD ST
HERMISTON, OR 97838

Findings of Fact

1. On July 29, 2016, BROKEN SPUR RANCH, LLC filed an application to temporarily change the place of use and to change the point of appropriation to serve the proposed place of use under Certificates 2545, 82164 and 86784 for a period of five years. The Department assigned the application number T-12449.
2. Notice of the application for transfer was published on August 9, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 9, 2016, the Department emailed the applicant’s agent addressing the deficiencies found in the initial review of the application.
4. On December 16, 2016, the Department emailed the applicant’s agent regarding the email sent on November 9, 2016, addressing the deficiencies found in the initial review of the application. The Department set forth a date of January 15, 2017, for the applicant and the applicant’s agent to respond with the necessary amendments to the application.

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.

5. On January 25, 2017, the Department received an amended application and map.
6. On April 11, 2017, the Department sent a deficiency letter to the applicant and the applicant's agent requesting resolution of the deficiencies found in the review of the amended application and map received on January 25, 2017. The Department set forth a date for resolution of the deficiencies and submission of the requested amendments by May 11, 2017.
7. On June 5, 2017, the Department received an amended application and map.
8. On June 13, 2017, the Department received an amended Watermaster Review, superseding the Watermaster Review completed on September 20, 2016.
9. The portion of the first right to be temporarily transferred is as follows:

Certificate: 2545 in the name of A. C. HENDERSON & SONS
(confirmed by Umatilla River Decree at Volume 3, Page 127)

Use: IRRIGATION OF 80.1 ACRES

Priority Date: 1891

Rate: 1.0 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water for irrigation is subject to the provisions of paragraph 33 of said decree and all other conditions and limitations contained in said decree.

Source: EAST BIRCH CREEK, a tributary of the UMATILLA RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW NW	4.0
1 S	32 E	WM	28	SW NW	5.1
1 S	32 E	WM	28	SE NW	4.5
1 S	32 E	WM	28	NE SW	11.5
1 S	32 E	WM	28	NW SW	8.5
1 S	32 E	WM	28	SW SW	10.5
1 S	32 E	WM	28	SE SW	3.0
1 S	32 E	WM	33	NE NW	22.0
1 S	32 E	WM	33	NW NW	2.0
1 S	32 E	WM	33	SE NW	9.0
Total					80.1

10. Certificate 2545 states East Birch Creek is a tributary of the Umatilla River, however, East Birch Creek is a tributary to Birch Creek, and both creeks are tributaries of the Umatilla River.

11. On March 28, 1956, the Department issued a final order, recorded at Special Order Volume 8, Page 496, changing the point of diversion for 31.0 acres and describing the location of the original point of diversion under Certificate 2545, described as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 S	32 E	WM	33	SE NW	PUMPING PLANT - 1345 FEET SOUTH AND 830 FEET WEST FROM THE N¼ CORNER OF SECTION 33
1 S	32 E	WM	33	NE SW	PRIVATE DITCH - 2670 FEET SOUTH AND 55 FEET WEST FROM THE N¼ CORNER OF SECTION 33

12. On March 28, 1956, the Department issued a final order, recorded at Special Order Volume 8, Page 496, changing the point of diversion for the following authorized place of use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	POD
1 S	32 E	WM	33	NE NW	22.0	PUMPING PLANT
1 S	32 E	WM	33	SE NW	9.0	PUMPING PLANT
Total					31.0	

13. Certificate 2545 does not describe the duty and rate limit per acre of the right, however information is available from the Umatilla River Decree indicating that the duty allowed for the right is one-eightieth of one cubic foot per second per acre and the duty limit as 4.5 acre-feet per acre consistent with paragraph 33 of the Umatilla Decree and all other conditions and limitations contained in the decree.

14. Transfer Application T-12449 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW NW	9.3
1 S	32 E	WM	28	SW NW	9.1
1 S	32 E	WM	28	SE NW	0.5
1 S	32 E	WM	28	NE SW	7.4
1 S	32 E	WM	28	NW SW	11.8
1 S	32 E	WM	28	SW SW	11.8
1 S	32 E	WM	28	SE SW	4.4
1 S	32 E	WM	33	NE NW	19.4
1 S	32 E	WM	33	NW NW	2.2
1 S	32 E	WM	33	SE NW	4.2
Total					80.1

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

Certificate: 82164 in the name of THOMAS E. RUGG
(perfected under Permit G-7968)

Use: PRIMARY IRRIGATION OF 8.1 ACRES AND SUPPLEMENTAL IRRIGATION OF 72.0 ACRES

Priority Date: AUGUST 31, 1977

Rate: 1.0 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 is equivalent) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year

Source: ONE WELL, in the UMATILLA BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	32 E	WM	28	SE NW	610 FEET NORTH AND 1350 FEET EAST FROM THE W¼ CORNER OF SECTION 28

Authorized Place of Use:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW SW	8.0
1 S	32 E	WM	28	SW SW	0.1
Total					8.1

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NE NW	1.3
1 S	32 E	WM	28	NW NW	18.8
1 S	32 E	WM	28	SW NW	20.6
1 S	32 E	WM	28	SE NW	6.0
1 S	32 E	WM	28	NE SW	9.1
1 S	32 E	WM	28	NW SW	8.2
1 S	32 E	WM	28	SW SW	8.0
Total					72.0

16. Transfer Application T-12449 proposes to temporarily change the place of use of the right to:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW SW	8.0
1 S	32 E	WM	28	SW SW	0.1
Total					8.1

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW NW	9.3
1 S	32 E	WM	28	SW NW	9.1
1 S	32 E	WM	28	SE NW	0.5
1 S	32 E	WM	28	NW SW	3.8
1 S	32 E	WM	28	NE SW	7.4
1 S	32 E	WM	28	SW SW	11.7
1 S	32 E	WM	28	SE SW	4.4
1 S	32 E	WM	33	NW NW	2.2
1 S	32 E	WM	33	NE NW	19.4
1 S	32 E	WM	33	SE NW	4.2
Total					72.0

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

Certificate: 86784 in the name of ARTHUR J. & KAREN L. FALK
(perfected under Permit G-5510)
Use: IRRIGATION OF 13.94 ACRES
Priority Date: JANUARY 11, 1972
Rate: 0.18 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL, in the EAST BIRCH CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	32 E	WM	21	SE SW	733 FEET NORTH AND 1429 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	21	SE SW	13.94

18. Transfer Application T-12449 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	32 E	WM	28	NW NW	13.94

19. A change in point of appropriation is necessary to convey water to the proposed temporary place of use. Temporary Transfer Application T-12449 proposes to move the authorized point of appropriation approximately 2800 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	32 E	WM	28	SE NW	610 FEET NORTH AND 1350 FEET EAST FROM THE W1/4 CORNER OF SECTION 28

Temporary Transfer Review Criteria

- 20. 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.
- 21. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
- 22. The proposed changes would not result in enlargement of the rights.

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

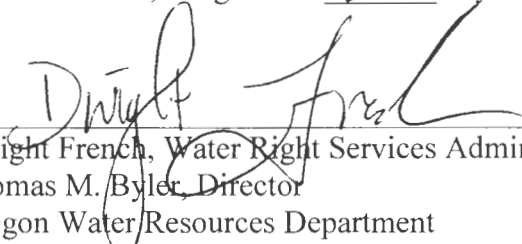
The temporary changes in place of use and point of appropriation to serve the temporary place of use proposed in Temporary Transfer Application T-12449 is consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The temporary changes in place of use and point of appropriation to serve the temporary place of use proposed in Temporary Transfer Application T-12449 are approved.
2. The former place of use **shall not** be irrigated as part of these water rights during the 2016, 2017, 2018, 2019 and 2021 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2021 irrigation season. The authorization to use the temporary point of appropriation 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. A subsequent application for permanent transfer of Certificates 2545, 82164 and 86784 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.
6. 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 2545, 82164 and 86784.
7. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
8. 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 (new and existing).
 - 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.

9. The use of the remaining water right described by Certificates 2545, 82164 and 86784 shall continue to be in accordance with the terms and conditions of Certificates 2545, 82164 and 86784.
10. The use of domestic and stock use as stated in Certificate 2545, confirmed by Umatilla River Decree at Volume 3, Page 127, is not affected by this transfer and the use shall continue to be in accordance with the terms and conditions of Certificate 2545.

Dated at Salem, Oregon this 21 day of November, 2017.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing Date: NOV 28 2017