

**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-10073, Umatilla County)	APPROVING A DISTRICT
)	TEMPORARY TRANSFER

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 January 19, 2006, Butter Creek Irrigation District filed a district transfer application to temporarily change the place of use, and the type of use from a primary right to a supplemental right, under Certificates 80705, 81408, 81409 and 63802. The Department assigned the application number T-10073.
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. Pursuant to OAR 690-385-3130 the applicant applied to temporarily change the subject water rights to supplemental irrigation at the proposed place of use during the 2006 irrigation season. Permit 51017 is the authorized irrigation water right at the proposed place of use of the subject water rights.
4. The portions of the FIRST and SECOND rights to be transferred are as follows:

IRRIGATION

Certificate: 80705, issued in the name of Butter Creek Irrigation District

Use: Irrigation

Priority Date: 1896

Rate & Duty: 0.26 cubic foot per second

Source: Butter Creek, tributary to 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:

CERTIFICATE 80705 – AUTHORIZED POINT OF DIVERSION							
TWP	RNG	MER	SEC	1/4	1/4	LOCATION	
2	N	27	E	WM	2	NE SE	50' S and 350' W from E ¼ Corner of Section 2

SUPPLEMENTAL IRRIGATION**Certificate:** 81408, issued in the name of Hale Brothers Farms**Use:** Supplemental Irrigation**Priority Date:** January 21, 1957**Rate & Duty:** 1/80 cfs per acre irrigated not to exceed 3.0 acre-feet per acre per year**Source:** Wells in Butter Creek Basin**Authorized Points of Appropriation:**

CERTIFICATE 81408 – AUTHORIZED POINTS OF APPROPRIATION							
TWP	RNG	MER	SEC	1/4	1/4	LOCATION	
2	N	27	E	WM	2	NE SE	Ammon Well #2 – 100' S and 130' W from E ¼ Corner of Section 2
2	N	27	E	WM	12	NW NW	Hanson Well #1 – 10' S and 10' E from NW Corner of Section 12
2	N	28	E	WM	7	NE NE	Hale Sr. Well – 1040' S and 440' W from NE Corner of Section 7

Authorized Places of Use:

IRRIGATION & SUPPLEMENTAL IRRIGATION - CERTIFICATES 80705 (IR) and 81408 (IS)									
TWP	RNG	MER	SEC	1/4 - 1/4	TL	CERTIFICATE (ACRES)		USER	
						80705	81408		
2	N	27	E	W.M	1 NW SW	200	4.00	4.00	HALE BROS. FARMS
2	N	27	E	W.M	2 SE NE	200	0.70	0.70	HALE BROS. FARMS
2	N	27	E	W.M	2 NE SE	200	2.90	2.90	HALE BROS. FARMS
2	N	27	E	W.M	2 NW SE	200	6.00	6.00	HALE BROS. FARMS
TOTAL:						13.60	13.60		

5. Application T-10037 proposes to TEMPORARILY change the place of use of the rights to:

IRRIGATION & SUPPLEMENTAL IRRIGATION CERTIFICATES 80705 (IR) and 81408 (IS)									
TWP	RNG	MER	SEC	1/4	1/4	TL	ACRES	USER	
3	N	28	E	W.M.	32	NW SW	9000	13.60	HALE BROS FARMS
TOTAL:							13.60		

6. The portion of the THIRD right to be transferred, and temporarily diminished to supplemental irrigation at the proposed place of use, is as follows:

Certificate: 81408, issued in the name of Hale Brothers Farms**Use:** Irrigation**Priority Date:** January 21, 1957**Rate & Duty:** 1/80 cfs per acre irrigated not to exceed 3.0 acre-feet per acre per year**Source:** Wells within the Butter Creek Basin**Authorized Points of Appropriation:**

CERTIFICATE 81408 – AUTHORIZED POINTS OF APPROPRIATION							
TWP	RNG	MER	SEC	1/4	1/4	LOCATION	
2	N	27	E	WM	2	NE SE	Ammon Well #2 – 100' S and 130' W from E ¼ Corner of Section 2
2	N	27	E	WM	12	NW NW	Hanson Well #1 – 10' S and 10' E from NW Corner of Section 12

CERTIFICATE 81408 – AUTHORIZED POINTS OF APPROPRIATION							
TWP	RNG	MER	SEC	1/4	1/4	LOCATION	
2	N	28	E	WM	7	NE NE	Hale Sr. Well – 1040' S and 440' W from NE Corner of Section 7

Authorized Place of Use:

IRRIGATION – CERTIFICATE 81408									
TWP		RNG		MER	SEC	1/4 - 1/4	TL	ACRES	USER
2	N	27	E	W.M	1	NE NE	100	11.22	HALE BROTHERS FARMS
2	N	27	E	W.M	1	SW NE	100	0.81	HALE BROTHERS FARMS
2	N	27	E	W.M	1	SE NE	100	7.39	HALE BROTHERS FARMS
2	N	27	E	W.M	1	NE SE	100	0.30	HALE BROTHERS FARMS
2	N	27	E	W.M	1	NW SE	100	17.22	HALE BROTHERS FARMS
2	N	27	E	W.M	2	SW NE	100	6.70	HALE BROTHERS FARMS
2	N	27	E	W.M	2	SE NE	100	10.50	HALE BROTHERS FARMS
2	N	27	E	W.M	2	NE SE	100	1.20	HALE BROTHERS FARMS
2	N	27	E	W.M	2	NW SE	100	17.60	HALE BROTHERS FARMS
TOTAL:								72.94	

7. Application T-10037 proposes to TEMPORARILY change the place of use of the right to:

DIMINISHED TO SUPPLEMENTAL IRRIGATION – CERTIFICATE 81408										
TWP		RNG		MER	SEC	1/4 - 1/4		TL	ACRES	USER
3	N	28	E	W.M.	32	NW	SW	9000	3.16	HALE BROS FARMS
3	N	28	E	W.M.	32	SW	SW	9000	27.50	HALE BROS FARMS
3	N	28	E	W.M.	32	SE	SW	9000	27.50	HALE BROS FARMS
2	N	28	E	W.M.	5	SE	NW	900	14.78	HALE BROS FARMS
TOTAL:									72.94	

8. The portion of the FOURTH right to be transferred, and temporarily diminished to supplemental irrigation at the proposed place of use, is as follows:

Certificate: 81409, issued in the name of Hale Brothers Farms

Use: Irrigation

Priority Date: January 21, 1959

Rate & Duty: 1/80 cfs per acre irrigated not to exceed 3.0 acre-feet per acre per year

Source: Wells within Umatilla River Basin

Authorized Points of Appropriation:

CERTIFICATE 81409 – AUTHORIZED POINTS OF APPROPRIATION							
TWP	RNG	MER	SEC	1/4	1/4	LOCATION	
2	N	27	E	WM	2	NE SE	Ammon Well #2 – 100' S and 130' W from E ¼ Corner of Section 2
2	N	27	E	WM	12	NW NW	Hanson Well #1 – 10' S and 10' E from NW Corner of Section 12
2	N	28	E	WM	7	NE NE	Hale Sr. Well – 1040' S and 440' W from NE Corner of Section 7

Authorized Place of Use:

CERTIFICATE 81409									
TWP	RNG	MER	SEC	1/4	1/4	TL	ACRES	USER	
2	N	27	E	W.M.	1	SE SW	404	2.50	HALE BROS FARMS
2	N	27	E	W.M.	1	SW SE	404	13.50	HALE BROS FARMS
2	N	27	E	W.M.	2	SW SE	401	10.00	HALE BROS FARMS

CERTIFICATE 81409								
TWP	RNG	MER	SEC	1/4	1/4	TL	ACRES	USER
2 N	27 E	W.M	12	NW	NE	400	1.50	HALE BROS FARMS
2 N	27 E	W.M	12	NE	NW	404,400	20.00	HALE BROS FARMS
TOTAL:							47.50	

9. Application T-10037 proposes to TEMPORARILY change the place of use of the right to:

DIMINISHED TO SUPPLEMENTAL IRRIGATION – CERTIFICATE 81409								
TWP	RNG	MER	SEC	1/4	1/4	TL	ACRES	USER
3 N	28 E	W.M.	32	NE	SW	9000	27.50	HALE BROS FARMS
3 N	28 E	W.M.	32	NW	SW	9000	10.54	HALE BROS FARMS
2 N	28 E	W.M	5	NW	NW	900	9.46	HALE BROS FARMS
TOTAL:							47.50	

10. The portion of the FIFTH right to be transferred is as follows:

Certificate: 63802, issued in the name of Hale Bothers Farms

Use: Irrigation

Priority Date: 1896

Rate & Duty: 0.78 cubic feet per second not to exceed 4.0 acre-feet per acre per year

Source: Butter Creek, tributary to Umatilla River

Authorized Point of Diversion:

CERTIFICATE 63802 – AUTHORIZED POINT OF DIVERSION								
TWP	RNG	MER	SEC	1/4	1/4	LOCATION		
2 N	27 E	WM	11	SW	NE	Butter Creek – 1330' S and 270' E from N ¼ Corner of Section 11		

Authorized Place of Use:

CERTIFICATE 63802 - IRRIGATION								
TWP	RNG	MER	SEC	1/4	1/4	TL	ACRES	USER
2 N	27 E	W.M.	11	NE	SW	1400/ 1401	40.00	HALE BROS. FARMS
TOTAL:							40.00	

11. Application T-10037 proposes to change the place of use of the right to:

CERTIFICATE 63802 - IRRIGATION								
TWP	RNG	MER	SEC	1/4	1/4	TL	ACRES	USER
2 N	28 E	W.M.	5	NE	NW	900	27.50	HALE BROS FARMS
2 N	28 E	W.M.	5	NW	NW	900	7.26	HALE BROS FARMS
2 N	28 E	W.M	5	SE	NW	900	5.24	HALE BROS FARMS
TOTAL:							40.00	

12. The portions of the SIXTH and SEVENTH rights to be transferred, and temporarily diminished to supplemental irrigation at the proposed place of use, are as follows:

IRRIGATION

Certificate: 63802, issued in the name of Hale Bothers Farms

Use: Irrigation

Priority Date: 1896

Rate & Duty: 0.89 cubic feet per second not to exceed 4.0 acre-feet per acre per year

Source: Butter Creek, tributary to Umatilla River

Authorized Point of Diversion:

CERTIFICATE 63802 – AUTHORIZED POINT OF DIVERSION						
TWP	RNG	MER	SEC	1/4	1/4	LOCATION
2	N	27	E	WM	11	SW NE Butter Creek -- 1330' S and 270' E from N ¼ Corner of Section 11

SUPPLEMENTAL IRRIGATION

Certificate: 81409, issued in the name of Hale Brothers Farms

Use: Supplemental Irrigation

Priority Date: January 21, 1959

Rate & Duty: 1/80 cfs per acre irrigated not to exceed 3.0 acre-feet per acre per year

Source: Wells within Umatilla River Basin

Authorized Points of Appropriation:

CERTIFICATE 81409 – AUTHORIZED POINTS OF APPROPRIATION								
TWP	RNG	MER	SEC	1/4	1/4	LOCATION		
2	N	27	E	WM	2	NE	SE	Ammon Well #2 – 100' S and 130' W from E ¼ Corner of Section 2
2	N	27	E	WM	12	NW	NW	Hanson Well #1 – 10' S and 10' E from NW Corner of Section 12
2	N	28	E	WM	7	NE	NE	Hale Sr. Well – 1040' S and 440' W from NE Corner of Section 7

Authorized Places of Use:

IRRIGATION & SUPPLEMENTAL IRRIGATION – CERTIFICATES 63802 (IR) and 81409 (IS)								
TWP	RNG	MER	SEC	1/4 - 1/4	TL	CERTIFICATE (ACRES)		USER
						63802	81409	
2 N	27 E	W.M	1	SW SE	404	1.76	1.76	HALE BROS. FARMS
2 N	27 E	W.M	2	SW SE	401	23.00	23.00	HALE BROS. FARMS
2 N	27 E	W.M	11	NW NE	401	21.00	21.00	HALE BROS. FARMS
TOTAL:						45.76	45.76	

13. Application T-10037 proposes to TEMPORARILY change the place of use of the rights to:

DIMINISHED FROM IRRIGATION TO SUPPLEMENTAL IRRIGATION CERTIFICATES 80705 (IR) & 81408 (IS)										
TWP	RNG	MER	SEC	1/4	1/4	TL	ACRES	RECIPIENT		
2	N	28	E	W.M.	5	NW	SW	900	10.78	HALE BROS FARMS
2	N	28	E	W.M.	5	SW	NW	900	27.50	HALE BROS FARMS
2	N	28	E	W.M.	5	SE	NW	900	7.48	HALE BROS FARMS
TOTAL:								45.76		

14. The water rights are subject to transfer as defined in OAR 690-385-0100(17).

15. The proposed changes in place of use would not result in enlargement of the rights.

16. The proposed changes would not result in injury to other water rights.

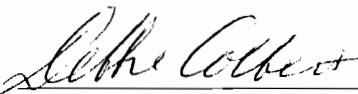
Conclusions of Law

The proposed changes in application T-10037 satisfy the requirements of ORS 540.574(3) and 540.570.

Now, therefore, it is ORDERED:

1. The proposed changes to the water rights evidenced by Certificates 80705, 81408, 81409 and 63802 are approved.
2. The temporary transfer is effective for the 2006 irrigation season.
3. 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.
4. Pursuant to OAR 690-385-3130, the use of water as a supplemental right under Certificates 63802, 80705, 81408 and 81409 is restricted to the total rate and duty described by the primary irrigation water right, Permit 51017, and may be used only to the extent of any supply deficiency for the primary water right at the proposed place of use.
5. The applicant shall not use water under Permit 46499 during the 2006 irrigation season at the authorized place of use.
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 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.
8. At the end of the 2006 irrigation season all uses of water under this temporary transfer revert automatically to the terms and conditions of the original water right permit, certificate, or adjudication as evidenced by a court decree.

Dated at Salem, Oregon this 24th day of March, 2006.


for Phillip C. Ward, Director

Mailing Date: MAR 27 2006