

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-10518, Morrow County) TEMPORARY 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 temporarily transfer the place of use and, if necessary to convey the water to the temporary place of use, the point of diversion 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

Tim Rust
77252 Mader Rust Lane
Echo, OR 97826

Agent

William I. Porfily
PO Box 643
Stanfield, OR 97875

Findings of Fact

Background

1. On January 7, 2008, Tim Rust filed an application to temporarily change the place of use under Certificates 74795 and 31096 and water use Permit S-46499 for a period of five years. The Department assigned the application number T-10518.

2. The portion of the first right to be transferred is as follows:

Certificate: 74795 in the name of SUCCESSORS IN INTEREST TO M. S. CORRIGAL (confirmed by the Butter Creek Decree)

Use: IRRIGATION of 10.0 ACRES

Priority Date: 1904

Rate: 0.20 CUBIC FOOT PER SECOND (cfs)

Source: BUTTER CREEK, tributary to the UMATILLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
2 N	27 E	WM	28	SE NE	POD #2 - 20 FEET NORTH AND 40 FEET WEST FROM THE W1/4 CORNER OF SECTION 27

This is an order in other than a 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 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 Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	27 E	WM	28	SW NE	3.8
2 N	27 E	WM	28	SE NE	6.2

3. Transfer Application T-10518 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	27 E	WM	28	SW NE	10.0

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

Certificate: 31096 in the name of ED TUCKER (TUCKER ECHO RANCH) (perfected under Permit U-450)

Use: SUPPLEMENTAL IRRIGATION of 10.0 ACRES

Priority Date: MAY 7, 1952

Rate: 0.11 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3 acre-feet per acre during the irrigation season of each year

Source: A WELL in the BUTTER CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
2 N	27 E	WM	28	SE NE	280 FEET NORTH AND 50 FEET WEST FROM THE E1/4 CORNER OF SECTION 28

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	27 E	WM	28	SW NE	3.8
2 N	27 E	WM	28	SE NE	6.2

5. Transfer Application T-10518 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	27 E	WM	28	SW NE	10.0

6. The portion of the water use permit to be transferred is as follows:

Permit: S-46499 in the name of JOHN MADISON, AGENT (filed under Application S-57999)

Use: SUPPLEMENTAL IRRIGATION of 10 ACRES

Priority Date: OCTOBER 16, 1978

Rate: 0.20 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: 1/50 cfs per acre, not to exceed 1.0 acre-foot per acre during the irrigation season provided further that the right together with the amount secured under any other right shall not exceed 4 acre-feet per acre during the irrigation season of each year.

Source: BUTTER CREEK, tributary to the UMATILLA RIVER

Season of Use: September 2 – December 30

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
2 N	27 E	WM	28	SE NE	DIVERSION P - 20 FEET NORTH AND 40 FEET WEST FROM THE W1/4 CORNER OF SECTION 27

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	27 E	WM	28	SW NE	3.8
2 N	27 E	WM	28	SE NE	6.2

7. Transfer Application T-10518 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	27 E	WM	28	SW NE	10.0

8. Notice of the application for temporary transfer was published on January 22, 2008, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
9. Water has been used within the last five years according to the terms and conditions of the rights and water use permit, and there is no information in the record that would demonstrate that the rights and permit are subject to forfeiture under ORS 540.610.
10. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights and permit are present.
11. The proposed change would not result in enlargement of the rights or water use permit.
12. The proposed change 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(6) 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 proposed in Transfer Application T-10518 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

13. The changes in place of use proposed in application T-10518 are approved.
14. The former place of use **shall not** be irrigated as part of this water right during the 2008, 2009, 2010, 2011 and 2012 irrigation seasons.
15. The use shall revert to the authorized place of use at the end of the 2012 irrigation season.

16. The approval of this temporary transfer may be revoked or modified if the Department finds the change causes injury to any existing water right.
17. A subsequent application for permanent transfer of Certificates 74795 and 31096 or 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.
18. 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 74795 and 31096 and water use Permit S-46499.
19. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
20. The water user shall maintain the existing headgate and shall make such improvements as may be required by the Department.
21. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
22. The use of the remaining water right described by Certificates 74795 and 31096 and water use Permit S-46499 shall continue to be in accordance with the terms and conditions of Certificates 74795 and 31096 and water use Permit S-46499.

Dated at Salem, Oregon this 26th day of February, 2008.



for Phillip C. Ward, Director

Mailing Date MAR 03 2008