

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

In the Matter of Transfer Application) **FINAL ORDER APPROVING A**
T-10446, 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 appropriation 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

BAKER PRODUCE SOUTH, INC.
C/O FRANK TIEGS, PRESIDENT
PO BOX 3110
PASCO, WA 99302

Agent

WILLIAM I. PORFILY
PO BOX 643
STANFIELD, OR 97875

Findings of Fact

Background

1. On August 24, 2007, Frank Tiegs, President of Baker Produce South Inc., on behalf of Baker Produce South Inc., filed an application to temporarily change the place of use under Certificates 68536, 61848 and 61849 for a period of one year. The Department assigned the application number T-10446.
2. Amendments to the transfer application and map were received by the Department on September 11 and September 12, 2007. These amendments clarified the authorized and proposed places of use.
3. The portion of the first right to be transferred is as follows:
Certificate: 68536 in the name of BOARDMAN FARMS INC. (perfected under Permit S-43877)
Use: PRIMARY IRRIGATION of 43.5 ACRES AND SUPPLEMENTAL IRRIGATION OF 210.8 ACRES
Priority Date: FEBRUARY 15, 1979

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

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 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.

Rate: 4.93 CUBIC FEET PER SECOND (cfs)

Limit/Duty: ONE-FORTIETH cfs per acre (or its equivalent), not to exceed 4.5 acre-feet per acre during the irrigation season of each year

Source: COLUMBIA RIVER, tributary to PACIFIC OCEAN

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|-----|------|-----|-----|-------|---|
| 4 N | 25 E | WM | 2 | NE NW | SOUTH 86 DEGREES 32 MINUTES 38 SECONDS WEST, 2841.57 FEET FROM THE NE CORNER OF SECTION 2 |

Authorized Place of Use:

| PRIMARY IRRIGATION | | | | | |
|--------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 2 N | 26 E | WM | 7 | NE NW | 13.1 |
| 2 N | 26 E | WM | 8 | NE SW | 1.4 |
| 2 N | 26 E | WM | 8 | NW SW | 0.3 |
| 2 N | 26 E | WM | 8 | SW SW | 0.7 |
| 2 N | 26 E | WM | 8 | SE SW | 1.6 |
| 2 N | 26 E | WM | 8 | NW SE | 0.1 |
| 2 N | 26 E | WM | 8 | SW SE | 0.1 |
| 2 N | 26 E | WM | 18 | NW SW | 16.6 |
| 2 N | 26 E | WM | 18 | SW SW | 6.7 |
| 2 N | 26 E | WM | 19 | NE NW | 2.9 |

| SUPPLEMENTAL IRRIGATION | | | | | |
|-------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 2 N | 26 E | WM | 7 | NE NE | 28.0 |
| 2 N | 26 E | WM | 8 | NE NE | 2.0 |
| 2 N | 26 E | WM | 8 | NW NE | 2.0 |
| 2 N | 26 E | WM | 8 | SW NE | 2.0 |
| 2 N | 26 E | WM | 8 | SE NE | 2.0 |
| 2 N | 26 E | WM | 8 | NE NW | 2.0 |
| 2 N | 26 E | WM | 8 | NW NW | 2.0 |
| 2 N | 26 E | WM | 8 | SW NW | 2.0 |
| 2 N | 26 E | WM | 8 | SE NW | 2.0 |
| 2 N | 26 E | WM | 8 | NE SE | 2.0 |
| 2 N | 26 E | WM | 8 | NW SE | 2.0 |
| 2 N | 26 E | WM | 8 | SW SE | 2.0 |
| 2 N | 26 E | WM | 8 | SE SE | 2.0 |
| 2 N | 26 E | WM | 17 | NE NE | 2.0 |
| 2 N | 26 E | WM | 17 | NW NE | 2.0 |
| 2 N | 26 E | WM | 17 | SW NE | 2.0 |
| 2 N | 26 E | WM | 17 | SE NE | 2.0 |
| 2 N | 26 E | WM | 17 | NE SW | 0.5 |
| 2 N | 26 E | WM | 17 | SE SW | 0.5 |
| 2 N | 26 E | WM | 17 | NE SE | 1.9 |
| 2 N | 26 E | WM | 17 | NW SE | 1.6 |
| 2 N | 26 E | WM | 17 | SW SE | 1.6 |
| 2 N | 26 E | WM | 17 | SE SE | 1.9 |
| 2 N | 26 E | WM | 18 | NE NW | 6.8 |
| 2 N | 26 E | WM | 18 | NW NW | 6.1 |
| 2 N | 26 E | WM | 18 | SW NW | 42.0 |
| 2 N | 26 E | WM | 18 | NW SW | 8.4 |
| 2 N | 26 E | WM | 18 | SW SW | 3.1 |
| 2 N | 26 E | WM | 18 | SE SW | 20.0 |
| 2 N | 26 E | WM | 18 | SW SE | 11.0 |
| 2 N | 26 E | WM | 19 | NW NE | 25.9 |
| 2 N | 26 E | WM | 19 | NE NW | 3.5 |
| 2 N | 26 E | WM | 20 | NE NE | 2.0 |
| 2 N | 26 E | WM | 20 | NW NE | 2.0 |
| 2 N | 26 E | WM | 20 | SW NE | 2.0 |
| 2 N | 26 E | WM | 20 | SE NE | 2.0 |
| 2 N | 26 E | WM | 20 | NE SE | 2.0 |
| 2 N | 26 E | WM | 20 | NW SE | 2.0 |
| 2 N | 26 E | WM | 20 | SW SE | 2.0 |
| 2 N | 26 E | WM | 20 | SE SE | 2.0 |

4. Transfer Application T-10446 proposes to change the place of use of the right to:

| PRIMARY IRRIGATION | | | | | | |
|--------------------|------|-----|-----|-------|---------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Tax Lot | Acres |
| 3 N | 26 E | WM | 30 | SW SE | 511 | 15.2 |
| 3 N | 26 E | WM | 30 | SE SE | 511 | 28.3 |

| SUPPLEMENTAL IRRIGATION | | | | | | |
|-------------------------|------|-----|-----|-------|---------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Tax Lot | Acres |
| 2 N | 26 E | WM | 6 | NE NE | 400 | 28.9 |
| 2 N | 26 E | WM | 6 | NW NE | 400 | 10.3 |
| 3 N | 26 E | WM | 30 | SW SE | 511 | 12.3 |
| 3 N | 26 E | WM | 31 | NE NE | 511 | 31.7 |
| 3 N | 26 E | WM | 31 | NW NE | 511 | 32.1 |
| 3 N | 26 E | WM | 31 | SW NE | 511 | 29.8 |
| 3 N | 26 E | WM | 31 | SE NE | 511 | 30.2 |
| 3 N | 26 E | WM | 31 | NE SE | 511 | 5.3 |
| 3 N | 26 E | WM | 31 | NW SE | 511 | 30.2 |

5. The portion of the second right to be transferred is as follows:
Certificate: 61848 in the name of FAR WEST FARMS (perfected under Permit G-3777)
Use: IRRIGATION of 391.6 ACRES
Priority Date: AUGUST 7, 1967
Rate: 0.72 CUBIC FOOT PER SECOND (cfs)
Limit/Duty: ONE-EIGHTIETH cfs per acre or its equivalent, not to exceed 3.0 acre-feet per acre during the irrigation season of each year
Source: TWO WELLS in the BUTTER CREEK BASIN

Authorized Points of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|-----|------|-----|-----|-------|--|
| 2 N | 26 E | WM | 18 | NE SE | WELL 3 - 30 FEET SOUTH AND 30 FEET WEST FROM THE E1/4 CORNER OF SECTION 18 |
| 2 N | 26 E | WM | 20 | NW SE | WELL 1 - 2470 FEET NORTH AND 2910 FEET EAST FROM THE SW CORNER OF SECTION 20 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 2 N | 26 E | WM | 7 | NE NE | 28.0 |
| 2 N | 26 E | WM | 7 | SW NW | 11.3 |
| 2 N | 26 E | WM | 7 | SE NW | 15.7 |
| 2 N | 26 E | WM | 7 | NE SW | 6.7 |
| 2 N | 26 E | WM | 7 | NW SW | 11.5 |
| 2 N | 26 E | WM | 7 | SW SW | 8.8 |
| 2 N | 26 E | WM | 7 | SE SW | 2.6 |
| 2 N | 26 E | WM | 8 | NE NE | 2.0 |
| 2 N | 26 E | WM | 8 | NW NE | 2.0 |
| 2 N | 26 E | WM | 8 | SW NE | 2.0 |
| 2 N | 26 E | WM | 8 | SE NE | 2.0 |
| 2 N | 26 E | WM | 8 | NE NW | 2.0 |
| 2 N | 26 E | WM | 8 | NW NW | 2.0 |
| 2 N | 26 E | WM | 8 | SW NW | 2.0 |
| 2 N | 26 E | WM | 8 | SE NW | 2.0 |
| 2 N | 26 E | WM | 8 | NE SE | 2.0 |
| 2 N | 26 E | WM | 8 | NW SE | 2.0 |
| 2 N | 26 E | WM | 8 | SW SE | 2.0 |
| 2 N | 26 E | WM | 8 | SE SE | 2.0 |
| 2 N | 26 E | WM | 17 | NE NE | 2.0 |
| 2 N | 26 E | WM | 17 | NW NE | 2.0 |
| 2 N | 26 E | WM | 17 | SW NE | 2.0 |
| 2 N | 26 E | WM | 17 | SE NE | 2.0 |
| 2 N | 26 E | WM | 17 | NE SW | 0.5 |
| 2 N | 26 E | WM | 17 | NW SW | 8.3 |
| 2 N | 26 E | WM | 17 | SW SW | 1.1 |
| 2 N | 26 E | WM | 17 | SE SW | 0.5 |
| 2 N | 26 E | WM | 17 | NE SE | 1.9 |
| 2 N | 26 E | WM | 17 | NW SE | 1.6 |
| 2 N | 26 E | WM | 17 | SW SE | 1.6 |
| 2 N | 26 E | WM | 17 | SE SE | 1.9 |
| 2 N | 26 E | WM | 18 | NW NE | 21.0 |
| 2 N | 26 E | WM | 18 | NE NW | 18.9 |
| 2 N | 26 E | WM | 18 | NW NW | 18.6 |
| 2 N | 26 E | WM | 18 | SW NW | 42.0 |
| 2 N | 26 E | WM | 18 | NW SW | 8.4 |
| 2 N | 26 E | WM | 18 | SW SW | 4.1 |
| 2 N | 26 E | WM | 18 | SE SW | 21.1 |
| 2 N | 26 E | WM | 18 | SW SE | 11.0 |
| 2 N | 26 E | WM | 19 | NW NE | 31.0 |
| 2 N | 26 E | WM | 19 | NE NW | 9.0 |
| 2 N | 26 E | WM | 19 | SE SW | 2.4 |
| 2 N | 26 E | WM | 19 | NE SE | 0.6 |
| 2 N | 26 E | WM | 19 | NW SE | 0.4 |
| 2 N | 26 E | WM | 19 | SW SE | 6.4 |
| 2 N | 26 E | WM | 19 | SE SE | 14.0 |
| 2 N | 26 E | WM | 20 | NE NE | 2.0 |
| 2 N | 26 E | WM | 20 | NW NE | 2.0 |
| 2 N | 26 E | WM | 20 | SW NE | 2.0 |

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 2 N | 26 E | WM | 20 | SE NE | 2.0 |
| 2 N | 26 E | WM | 20 | NW NW | 17.8 |
| 2 N | 26 E | WM | 20 | SW NW | 5.6 |
| 2 N | 26 E | WM | 20 | NE SE | 2.0 |
| 2 N | 26 E | WM | 20 | NW SE | 2.0 |
| 2 N | 26 E | WM | 20 | SW SE | 2.0 |
| 2 N | 26 E | WM | 20 | SE SE | 2.0 |
| 2 N | 26 E | WM | 30 | NE NE | 9.3 |

6. Transfer Application T-10446 proposes to change the place of use of the right to:

| IRRIGATION | | | | | | |
|------------|------|-----|-----|-------|---------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Tax Lot | Acres |
| 2 N | 26 E | WM | 6 | NE NE | 400 | 28.9 |
| 2 N | 26 E | WM | 6 | NW NE | 400 | 28.6 |
| 2 N | 26 E | WM | 6 | SW NE | 400 | 28.9 |
| 2 N | 26 E | WM | 6 | SE NE | 400 | 28.6 |
| 2 N | 26 E | WM | 6 | NE SE | 400 | 26.4 |
| 2 N | 26 E | WM | 6 | NW SE | 400 | 26.1 |
| 2 N | 26 E | WM | 6 | SW SE | 400 | 26.4 |
| 2 N | 26 E | WM | 6 | SE SE | 400 | 26.1 |
| 3 N | 26 E | WM | 30 | SW SE | 511 | 12.3 |
| 3 N | 26 E | WM | 31 | NE NE | 511 | 31.7 |
| 3 N | 26 E | WM | 31 | NW NE | 511 | 32.1 |
| 3 N | 26 E | WM | 31 | SW NE | 511 | 29.8 |
| 3 N | 26 E | WM | 31 | SE NE | 511 | 30.2 |
| 3 N | 26 E | WM | 31 | NE SE | 511 | 5.3 |
| 3 N | 26 E | WM | 31 | NW SE | 511 | 30.2 |

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

Certificate: 61849 in the name of FAR WEST FARMS (perfected under Permit G-4504)

Use: SUPPLEMENTAL IRRIGATION of 391.6 ACRES

Priority Date: FEBRUARY 10, 1969

Rate: 0.72 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: ONE-EIGHTIETH cfs per acre or its equivalent, not to exceed 3.0 acre-feet per acre during the irrigation season of each year

Source: TWO WELLS in the BUTTER CREEK BASIN

Authorized Points of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|-----|------|-----|-----|-------|---|
| 2 N | 26 E | WM | 17 | NW NE | WELL 2 - 100 FEET SOUTH AND 1350 FEET WEST FROM THE NE CORNER OF SECTION 17 |
| 2 N | 26 E | WM | 18 | NE SE | WELL 3 - 30 FEET SOUTH AND 30 FEET WEST FROM THE E1/4 CORNER OF SECTION 18 |

Authorized Place of Use:

| SUPPLEMENTAL IRRIGATION | | | | | |
|-------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 2 N | 26 E | WM | 7 | NE NE | 28.0 |
| 2 N | 26 E | WM | 7 | SW NW | 11.3 |
| 2 N | 26 E | WM | 7 | SE NW | 15.7 |
| 2 N | 26 E | WM | 7 | NE SW | 6.7 |
| 2 N | 26 E | WM | 7 | NW SW | 11.5 |
| 2 N | 26 E | WM | 7 | SW SW | 8.8 |
| 2 N | 26 E | WM | 7 | SE SW | 2.6 |
| 2 N | 26 E | WM | 8 | NE NE | 2.0 |
| 2 N | 26 E | WM | 8 | NW NE | 2.0 |
| 2 N | 26 E | WM | 8 | SW NE | 2.0 |
| 2 N | 26 E | WM | 8 | SE NE | 2.0 |
| 2 N | 26 E | WM | 8 | NE NW | 2.0 |
| 2 N | 26 E | WM | 8 | NW NW | 2.0 |
| 2 N | 26 E | WM | 8 | SW NW | 2.0 |
| 2 N | 26 E | WM | 8 | SE NW | 2.0 |
| 2 N | 26 E | WM | 8 | NE SE | 2.0 |
| 2 N | 26 E | WM | 8 | NW SE | 2.0 |
| 2 N | 26 E | WM | 8 | SW SE | 2.0 |
| 2 N | 26 E | WM | 8 | SE SE | 2.0 |
| 2 N | 26 E | WM | 17 | NE NE | 2.0 |
| 2 N | 26 E | WM | 17 | NW NE | 2.0 |
| 2 N | 26 E | WM | 17 | SW NE | 2.0 |
| 2 N | 26 E | WM | 17 | SE NE | 2.0 |
| 2 N | 26 E | WM | 17 | NE SW | 0.5 |
| 2 N | 26 E | WM | 17 | NW SW | 8.3 |
| 2 N | 26 E | WM | 17 | SW SW | 1.1 |
| 2 N | 26 E | WM | 17 | SE SW | 0.5 |
| 2 N | 26 E | WM | 17 | NE SE | 1.9 |
| 2 N | 26 E | WM | 17 | NW SE | 1.6 |
| 2 N | 26 E | WM | 17 | SW SE | 1.6 |
| 2 N | 26 E | WM | 17 | SE SE | 1.9 |
| 2 N | 26 E | WM | 18 | NW NE | 21.0 |
| 2 N | 26 E | WM | 18 | NE NW | 18.9 |
| 2 N | 26 E | WM | 18 | NW NW | 18.6 |
| 2 N | 26 E | WM | 18 | SW NW | 42.0 |
| 2 N | 26 E | WM | 18 | NW SW | 8.4 |
| 2 N | 26 E | WM | 18 | SW SW | 4.1 |
| 2 N | 26 E | WM | 18 | SE SW | 21.1 |
| 2 N | 26 E | WM | 18 | SW SE | 11.0 |
| 2 N | 26 E | WM | 19 | NW NE | 31.0 |
| 2 N | 26 E | WM | 19 | NE NW | 9.0 |
| 2 N | 26 E | WM | 19 | SE SW | 2.4 |
| 2 N | 26 E | WM | 19 | NE SE | 0.6 |
| 2 N | 26 E | WM | 19 | NW SE | 0.4 |
| 2 N | 26 E | WM | 19 | SW SE | 6.4 |
| 2 N | 26 E | WM | 19 | SE SE | 14.0 |
| 2 N | 26 E | WM | 20 | NE NE | 2.0 |
| 2 N | 26 E | WM | 20 | NW NE | 2.0 |
| 2 N | 26 E | WM | 20 | SW NE | 2.0 |

| SUPPLEMENTAL IRRIGATION | | | | | |
|-------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 2 N | 26 E | WM | 20 | SE NE | 2.0 |
| 2 N | 26 E | WM | 20 | NW NW | 17.8 |
| 2 N | 26 E | WM | 20 | SW NW | 5.6 |
| 2 N | 26 E | WM | 20 | NE SE | 2.0 |
| 2 N | 26 E | WM | 20 | NW SE | 2.0 |
| 2 N | 26 E | WM | 20 | SW SE | 2.0 |
| 2 N | 26 E | WM | 20 | SE SE | 2.0 |
| 2 N | 26 E | WM | 30 | NE NE | 9.3 |

8. Transfer Application T-10446 proposes to change the place of use of the right to:

| SUPPLEMENTAL IRRIGATION | | | | | | |
|-------------------------|------|-----|-----|-------|---------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Tax Lot | Acres |
| 2 N | 26 E | WM | 6 | NE NE | 400 | 28.9 |
| 2 N | 26 E | WM | 6 | NW NE | 400 | 28.6 |
| 2 N | 26 E | WM | 6 | SW NE | 400 | 28.9 |
| 2 N | 26 E | WM | 6 | SE NE | 400 | 28.6 |
| 2 N | 26 E | WM | 6 | NE SE | 400 | 26.4 |
| 2 N | 26 E | WM | 6 | NW SE | 400 | 26.1 |
| 2 N | 26 E | WM | 6 | SW SE | 400 | 26.4 |
| 2 N | 26 E | WM | 6 | SE SE | 400 | 26.1 |
| 3 N | 26 E | WM | 30 | SW SE | 511 | 12.3 |
| 3 N | 26 E | WM | 31 | NE NE | 511 | 31.7 |
| 3 N | 26 E | WM | 31 | NW NE | 511 | 32.1 |
| 3 N | 26 E | WM | 31 | SW NE | 511 | 29.8 |
| 3 N | 26 E | WM | 31 | SE NE | 511 | 30.2 |
| 3 N | 26 E | WM | 31 | NE SE | 511 | 5.3 |
| 3 N | 26 E | WM | 31 | NW SE | 511 | 30.2 |

9. Notice of the application for temporary transfer was published on September 4, 2007, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
10. Transfer Application T-10446 proposes to temporarily transfer water rights within the boundaries of the Columbia Improvement District. The district was notified of the proposed temporary transfer and the district indicated that they did not object to the transfer.
11. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
12. 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-10446.
13. The proposed change would not result in enlargement of the rights.

14. 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-10446 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The changes in place of use proposed in Transfer Application T-10446 are approved.
2. The former place of use **shall not** be irrigated as part of this water right during the 2007 irrigation season.
3. The use shall revert to the authorized place of use at the end of the 2007 irrigation season.
4. The approval of this temporary transfer may be revoked or modified if the Department finds the change causes injury to any existing water right.
5. A subsequent application for permanent transfer of Certificates 68536, 61848 and 61849 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 68536, 61848 and 61849.
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. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
9. The use of the remaining water right described by Certificates 68536, 61848 and 61849 shall continue to be in accordance with the terms and conditions of Certificates 68536, 61848 and 61849.

Dated at Salem, Oregon this 18th day of September, 2007.


Phillip C. Ward, Director

Mailing Date: SEP 19 2007

T-10446.smd