

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-11437, Polk County)	TEMPORARY CHANGE IN PLACES
)	OF USE AND POINTS OF DIVERSION

Authority

ORS 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

OLSEN AGRICULTURE, LLC
ROGER OLSEN
8930 SUVER RD
MONMOUTH, OR 97361

Findings of Fact

1. On June 25, 2012, OLSEN AGRICULTURE, LLC filed an application to temporarily change the places of use and points of diversion to serve the proposed places of use under Certificates 26578, 32343, 43607, and 47650 for a period of 2 years. The Department assigned the application number T-11437.
2. On July 19, 2012, the applicant's agent amended the "from" place of use for Certificate 26578.
3. The portion of the first right to be temporarily transferred is as follows:

Certificate: 26578 in the name of V. L. MATHANY (perfected under Permit S-19903)
Use: IRRIGATION OF 127.9 ACRES
Priority Date: NOVEMBER 10, 1950
Rate: 1.49 CUBIC FEET PER SECOND

This is a final 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.

Limit/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-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year and shall be further limited to a diversion of not to exceed 1.49 cubic feet per second.

Source: (BIG) LUCKIAMUTE RIVER, a tributary of the WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
9 S	6 W	WM	24	SW SE
9 S	6 W	WM	24	SE SE

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
9 S	5 W	WM	19	SW SW		34.8
9 S	5 W	WM	19	SE SW		10.2
9 S	6 W	WM	24	NE SE		0.4
9 S	6 W	WM	24	SW SE	4	19.2
9 S	6 W	WM	24	SE SE		30.0
9 S	6 W	WM	25	NE NE		17.6
9 S	6 W	WM	25	NW NE	1	15.7
TOTAL						127.9

4. Temporary Transfer Application T-11437 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	4 W	WM	29	NE SW	2.0
9 S	4 W	WM	29	NW SW	12.2
9 S	4 W	WM	29	SW SW	36.0
9 S	4 W	WM	29	SE SW	6.1
9 S	4 W	WM	32	NE NW	6.5
9 S	4 W	WM	32	NW NW	38.0
9 S	4 W	WM	32	SW NW	24.0
9 S	4 W	WM	32	SE NW	3.1
TOTAL					127.9

5. A change in points of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-11437 proposes to move the authorized points of diversion approximately 24.5 stream miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
9 S	4 W	WM	29	NE SW	46	1000 FEET NORTH AND 100 FEET WEST FROM THE NORTHERLY SE CORNER OF DLC 46

6. The second right to be temporarily transferred is as follows:

Certificate: 32343 in the name of V. L. MATHANY (perfected under Permit S-28593)

Use: IRRIGATION OF 91.3 ACRES

Priority Date: JANUARY 18, 1963

Rate: 1.14 CUBIC FEET 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, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: (BIG) LUCKIAMUTE RIVER, a tributary of the WILLAMETTE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot
9 S	5 W	WM	19	NW SW	
9 S	5 W	WM	24	NW SE	3
9 S	5 W	WM	25	SE SE	

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
9 S	5 W	WM	30	NE NW		14.4
9 S	5 W	WM	30	NW NW		38.0
9 S	6 W	WM	25	NE NE		20.4
9 S	6 W	WM	25	NW NE	1	18.5
TOTAL						91.3

7. Temporary Transfer Application T-11437 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	4 W	WM	29	SE SW	0.5
9 S	4 W	WM	29	SW SE	4.0
9 S	4 W	WM	31	SE NE	3.0
9 S	4 W	WM	31	NE SE	10.5
9 S	4 W	WM	31	SE SE	7.0
9 S	4 W	WM	32	NW NE	6.5
9 S	4 W	WM	32	SW NE	6.5
9 S	4 W	WM	32	NE NW	5.2
9 S	4 W	WM	32	SW NW	14.5
9 S	4 W	WM	32	SE NW	2.9
9 S	4 W	WM	32	SE NW	7.7
9 S	4 W	WM	32	NE SW	5.4
9 S	4 W	WM	32	NW SW	9.5
9 S	4 W	WM	32	SW SW	5.0
9 S	4 W	WM	32	NW SE	3.1
TOTAL					91.3

8. A change in points of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-11437 proposes to move the authorized points of diversion approximately 24.5 stream miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
9 S	4 W	WM	29	NE SW	46	1000 FEET NORTH AND 100 FEET WEST FROM THE NORTHERLY SE CORNER OF DLC 46

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

Certificate: 43607 in the name of J. W. AUER (perfected under Permit S-34980)

Use: IRRIGATION OF 104.9 ACRES

Priority Date: APRIL 30, 1970

Rate: 1.31 CUBIC FEET 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, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: LUCKIAMUTE RIVER, a tributary of the WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
9 S	5 W	WM	17	SE SE	69	560 FEET NORTH AND 1090 FEET WEST FROM THE SE CORNER OF SECTION 17

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
9 S	5 W	WM	20	NE NE	69	30.9
9 S	5 W	WM	20	NW NE	69	1.0
9 S	5 W	WM	20	SW NE	69	13.5
9 S	5 W	WM	20	SE NE	69	31.2
9 S	5 W	WM	21	NW NW	69	22.2
9 S	5 W	WM	21	SW NW	69	6.1
TOTAL						104.9

10. Temporary Transfer Application T-11437 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	4 W	WM	29	SW SE	19.8
9 S	4 W	WM	29	SE SE	5.0
9 S	4 W	WM	32	NE NE	10.0
9 S	4 W	WM	32	NW NE	33.5
9 S	4 W	WM	32	SW NE	33.5
9 S	4 W	WM	32	SE NE	3.1
TOTAL					104.9

11. A change in points of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-11437 proposes to move the authorized points of diversion approximately 21.0 stream miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
9 S	4 W	WM	29	NE SW	46	1000 FEET NORTH AND 100 FEET WEST FROM THE NORTHERLY SE CORNER OF DLC 46

12. The fourth right to be temporarily transferred is as follows:

Certificate: 47650 in the name of J.W. AUER (perfected under Permit S-34980)

Use: IRRIGATION OF 29.5 ACRES

Priority Date: APRIL 30, 1970

Rate: 0.37 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, shall be limited to of ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: LUCKIAMUTE RIVER, a tributary to the WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
9 S	5 W	WM	16	SE SE	59	600 FEET NORTH AND 500 FEET WEST FROM THE SE CORNER OF SECTION 16

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
9 S	5 W	WM	15	SW SW	59	0.3
9 S	5 W	WM	16	SW SE	59	1.7
9 S	5 W	WM	16	SE SE	59	12.4
9 S	5 W	WM	21	NE NE	59	10.0
9 S	5 W	WM	21	NW NE	59	4.5
9 S	5 W	WM	22	NW NW	59	0.6
TOTAL						29.5

13. Temporary Transfer Application T-11437 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	4 W	WM	32	SE NE	6.9
9 S	4 W	WM	32	NE SE	5.5
9 S	4 W	WM	32	NW SE	17.1
TOTAL					29.5

14. A change in points of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-11437 proposes to move the authorized points of diversion approximately 19.5 stream miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
9 S	4 W	WM	29	NE SW	46	1000 FEET NORTH AND 100 FEET WEST FROM THE NORTHERLY SE CORNER OF DLC 46

15. Notice of the application for transfer was published on July 3, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

Temporary Transfer Review Criteria

16. 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.
17. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
18. The applicant has indicated that they propose to irrigate the proposed temporary place of use to October 31. However, the irrigation season for the Luckiamute River has been fixed by the Luckiamute River decree as being April 1 through September 30.
19. The proposed changes would not result in enlargement of the rights.
20. 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

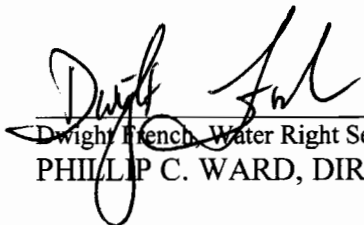
The temporary change in places of use and points of diversion to convey water to the temporary places of use proposed in application Temporary Transfer Application T-11437 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The temporary change in places of use and points of diversion to convey water to the temporary places of use proposed in Temporary Transfer Application T-11437 are approved.
2. The former place of use **shall not** be irrigated as part of these water rights during the 2012 and 2013 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2013 irrigation season. The authorization to use the temporary points of diversion 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 26578, 32343, 43607, and 47650 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 26578, 32343, 43607, and 47650.
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 use of water under these rights on the proposed temporary places of use is limited to the irrigation season of April 1 to September 30.
9. 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 the new point of diversion.
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
10. The use of the remaining water rights described by Certificates 26578 and 32343 shall continue to be in accordance with the terms and conditions of Certificates 26578 and 32343.

Dated at Salem, Oregon this 7 day of August, 2012.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing Date: **AUG 13 2012**