

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

COUNTY OF UMATILLA

In the Matter of a Proposed Temporary Change) ORDER
In Place of Use of Water and Additional Points of) APPROVING A
Appropriation — TRANSFER 9350) TEMPORARY TRANSFER

FINDINGS OF FACT

1. Pursuant to ORS 540.523, HALE BROTHERS FARMS, INC., PO Box 110, Hermiston, OR, 97838, submitted a transfer application to the Oregon Water Resources Department to temporarily change the place of use of water and add points of appropriation to facilitate the proposed change in place of use. The transfer application was received on February 14, 2003, and included the required fees.
2. The Department assigned the transfer application number T-9350.
3. The Department published notice of receipt of the temporary transfer application in the Department's Weekly Notice dated March 11, 2003.
4. No comments or timely protests were received in response to the published notice.
5. The first water right to be modified, as evidenced by a portion of Certificate 53666, was confirmed by decree of the Circuit Court of the State of Oregon for Umatilla County entered in the Order Record of the Water Resources Department at Volume 3, page 250. The dates of priority are 1866 for 0.216 cubic foot per second (cfs), 1870 for 0.432 cfs, 1884 for 0.216 cfs, and 1896 for 5.484 cfs.

The right allows the use of not more than 6.348 cfs from Butter Creek, tributary to the Umatilla River, for irrigation of 326.0 acres if available at the original point of diversion located in the SE¼ SW¼, Section 11, Township 2 North, Range 27 East; 970 feet North and 450 feet West from the South ¼ Corner, Section 11.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order 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 137-004-080 and OAR 690-01-005, you may either petition for judicial review or petition the Director for reconsideration of this order

The additional point of diversion authorized by Transfer 7545, from which water will be diverted for the proposed temporary change in place of use, is located in the NE¼ NE¼, Section 2, Township 2 North, Range 27 East; 1290 feet South and 80 feet West from the NE Corner, Section 2.

The authorized places of use are located as follows:

USE	TWP	RNG	SEC	Q/Q	TAXLOT	ACRES	PRIORITY	ATT. #
IR	2N	27E	1	NE NE	100	18.00	1896.	1.
IR	2N	27E	1	NW NE	100	40.00	1896.	1.
IR	2N	27E	2	NE SE	100	11.22	1896	1.
IR	2N	27E	2	NW SE	100	6.00	1896	1.
						75.22		

The applicant proposes to change the places of use to:

USE	TWP	RNG	SEC	Q/Q	TAXLOT	ACRES	PRIORITY	ATT. #
IR	2N	28E	8	NE NW	1500	31.50	1896.	1.
IR	2N	28E	8	SE NW	1500	26.50	1896.	1.
IR	2N	28E	5	SW NE	900	6.00	1896	1.
IR	2N	27E	1	NE NE	200	11.22	1896	1.
						75.22		

- The second water right to be modified, as evidenced by a portion of Certificate 53658, was perfected under Permit G-434. The date of priority is January 21, 1957.

The right allows the use of 4.0 cfs from Wells #1 and #2, tributary to Butter Creek, for irrigation of 96.75 acres and supplemental irrigation of 322.59 acres. The points of appropriation are located as follows:

Well #1 - SE¼ NW¼, Section 1, T 2 N, R 27 E; 10 feet North and 2400 feet East from the East ¼ Corner, Section 2.

Well #2 - NE¼ SE¼, Section 2, T 2 N, R 27 E; 100 feet South and 130 feet West from the East ¼ Corner, Section 2.

The applicant proposes to add the following points of appropriation to facilitate the proposed changes in place of use:

Hanson Well #1 -NW¼ NW¼ , Section 12, Township 2 North, Range 27 East; 10 feet South and 10 feet East from the NW Corner, Section 12.

Hale Sr. Well -NE¼ NE¼, Section 7, Township 2 North, Range 28 East; 1040 feet South and 440 feet West from the NE Corner, Section 7.

The authorized places of use are located as follows:

USE	TWP	RNG	SEC	Q/Q	TAXLOT	ACRES	PRIORITY	ATT.#
IR	2N	27E	1	NE NE	100	11.22	01-21-1957.	2.
IR	2N	27E	1	SW NE	100	0.81	01-21-1957	2.
IR	2N	27E	1	SE NE	100	7.39	01-21-1957	2.

USE	TWP	RNG	SEC	Q/Q	TAXLOT	ACRES	PRIORITY	ATT.#
IR	2N	27E	1	NE SE	100	0.30	01-21-1957	2.
IR	2N	27E	1	NW SE	100	17.22	01-21-1957	2.
IR	2N	27E	2	SW NE	100	6.70	01-21-1957	2.
IR	2N	27E	2	SE NE	100	34.20	01-21-1957	2.
IR	2N	27E	2	NE SE	100	1.20	01-21-1957	2.
IR	2N	27E	2	NW SE	100	17.60	01-21-1957	2.
IR(S)	2N	27E	1	NE NE	100	18.00	01-21-1957	1.
IR(S)	2N	27E	1	NW NE	100	40.00	01-21-1957	1.
IR(S)	2N	27E	2	NE SE	100	11.22	01-21-1957	1.
IR(S)	2N	27E	2	NW SE	100	6.00	01-21-1957	1.
						171.86		

The applicant proposes to change the places of use to:

USE	TWP	RNG	SEC	Q/Q	TAXLOT	ACRES	PRIORITY	ATT.#
IR	2N	28E	5	SE NE	900	28.50	01-21-1957.	2.
IR	2N	28E	8	NW NW	1501	31.50	01-21-1957.	2.
IR	2N	28E	8	SW NW	1501	31.54	01-21-1957.	2.
IR	2N	28E	8	SE NW	1500	5.10	01-21-1957.	2.
IR(S)	2N	28E	8	NE NW	1500	31.50	01-21-1957	1.
IR(S)	2N	28E	8	SE NW	1500	26.50	01-21-1957	1.
IR(S)	2N	28E	5	SW NE	900	6.00	01-21-1957	1.
IR(S)	2N	27E	1	NE NE	200	11.22	01-21-1957	1.
						171.86		

7. The third water right to be modified, as evidenced by a portion of Certificate 30742, was perfected under Permit G-1227. The date of priority is January 21, 1959.

The right allows the use of a Well, tributary to the Umatilla River, for irrigation of 54.5 acres and supplemental irrigation of 274.0 acres. The authorized point of appropriation is located as follows: Hanson Well #1 -- NW NW , Section 12, Township 2 N, Range 27 E, W.M.

The applicant proposes to add the following points of appropriation to facilitate the proposed change in place of use:

Ammon Well #2 - NE¼ SE¼, Section 2, Township 2 North, Range 27 East; 100 feet South and 130 feet West from the East ¼ Corner, Section 2.

Hale Sr. Well - NE¼ NE¼, Section 7, Township 2 North, Range 28 East; 1040 feet South and 440 feet West from the NE Corner, Section 7.

The authorized places of use are located as follows:

USE	TWP	RNG	SEC	Q/Q	TAXLOT	ACRES	PRIORITY	ATT. #
IR	2N	27E	1	SE SW	404	2.50	01-21-1959.	3.
IR	2N	27E	1	SW SE	404	13.50	01-21-1959.	3.
IR	2N	27E	2	SW SE	401	10.00	01-21-1959.	3.
IR	2N	27E	12	NW NE	400	1.50	01-21-1959.	3.
IR	2N	27E	12	NE NW	404,400	20.00	01-21-1959.	3.
IR(S)	2N	27E	2	SW SE	401	23.00	01-21-1959	4.
IR(S)	2N	27E	11	NW NE	401	21.00	01-21-1959	4.

USE	TWP	RNG	SEC	Q/Q	TAXLOT	ACRES	PRIORITY	ATT. #
						91.50		

The applicant proposes to change the places of use to:

USE	TWP	RNG	SEC	Q/Q	TAXLOT	ACRES	PRIORITY	ATT. #
IR	2N	28E	5	NE NE	900	31.50	01-21-1959.	3.
IR	2N	28E	5	NW NE	900	13.00	01-21-1959.	3.
IR	2N	28E	5	SE NE	900	3.00	01-21-1959.	3.
IR(S)	2N	28E	5	NW NE	900	18.50	01-21-1959.	4.
IR(S)	2N	28E	5	SW NE	900	25.50	01-21-1959.	4.
						91.50		

8. The fourth water right to be modified, as evidenced by a portion of Certificate 63802, was confirmed by decree of the Circuit Court of the State of Oregon for Umatilla County entered in the Order Record of the Water Resources Department at Volume 3, page 250. The dates of priority are 1866 for 0.284 cubic foot per second (cfs), 1870 for 0.568 cfs, 1884 for 0.284 cfs, and 1896 for 7.216 cfs.

The right allows the use of not more than 8.352 cfs from Butter Creek, tributary to the Umatilla River, for domestic and livestock purposes, and irrigation of 429.0 acres if available at the original point of diversion.

The point of diversion is located in the SW¹/₄ NE¹/₄, Section 11, T 2 N, R 27 E; 1330 feet South and 270 feet East from the North ¹/₄ Corner, Section 11.

The authorized places of use are located as follows:

USE	TWP	RNG	SEC	Q/Q	TAXLOT	ACRES	PRIORITY	ATT. #
IR	2N	27E	2	SW SE	401	23.00	1896.	4.
IR	2N	27E	11	NW NE	401	21.00	1896.	4.
IR	2N	27E	11	NE SW	1400	22.10	1896	5
IR	2N	27E	11	NE SW	1401	15.40	1896	5.
						81.50		

The applicant proposes to change the places of use to:

USE	TWP	RNG	SEC	Q/Q	TAXLOT	ACRES	PRIORITY	ATT. #
IR	2N	28E	5	NW NE	900	18.50	1896	4.
IR	2N	28E	5	SW NE	900	25.50	1896	4.
IR	2N	27E	1	SE SW	404	2.50	1896	5.
IR	2N	27E	1	SW SE	404	13.50	1896	5.
IR	2N	27E	12	NW NE	400	1.50	1896	5.
IR	2N	27E	12	NE NW	400/403	20.00	1896	5.
						81.50		

9. The fifth water right to be modified is evidenced by a portion of Permit 46499. The date of priority is October 16, 1978.

The right allows the use of 108.7 cfs from Butter Creek, tributary to the Umatilla River, for supplemental irrigation between September 2 and December 30 of each year. The point of diversion is located as follows: SE¼ SW¼, Section 11, T 2 N, R 27 E; 970 feet North and 450 feet West from the South ¼ Corner, Section 11.

The authorized places of use are located as follows:

USE	TWP	RNG	SEC	Q/Q	TAXLOT	ACRES	PRIORITY	ATT.#
IR(S)	2N	27E	1	NE NE	100	18.00	10-16-1978.	1.
IR(S)	2N	27E	1	NW NE	100	40.00	10-16-1978.	1.
IR(S)	2N	27E	2	NE SE	100	11.22	10-16-1978	1.
IR(S)	2N	27E	2	NW SE	100	6.00	10-16-1978.	1.
IR(S)	2N	27E	2	SW SE	401	23.00	10-16-1978	4.
IR(S)	2N	27E	11	NW NE	401	21.00	10-16-1978	4.
IR(S)	2N	27E	11	NE SW	1400	22.10	10-16-1978	5.
IR(S)	2N	27E	11	NE SW	1401	15.40	10-16-1978	5.
						156.72		

The applicant proposes to change the places of use to:

USE	TWP	RNG	SEC	Q/Q	TAXLOT	ACRES	PRIORITY	ATT.#
IR(S)	2N	27E	1	NE NE	200	11.22	10-16-1978	1.
IR(S)	2N	27E	1	SE SW	404	2.50	10-16-1978	5.
IR(S)	2N	27E	1	SW SE	404	13.50	10-16-1978	5.
IR(S)	2N	27E	12	NW NE	400	1.50	10-16-1978	5.
IR(S)	2N	27E	12	NE NW	400/403	20.00	10-16-1978	5.
IR(S)	2N	28E	5	NW NE	900	18.50	10-16-1978	4.
IR(S)	2N	28E	5	SW NE	900	25.50	10-16-1978	4.
IR(S)	2N	28E	8	NE NW	1500	31.50	10-16-1978	1.
IR(S)	2N	28E	8	SE NW	1500	26.50	10-16-1978	1.
IR(S)	2N	28E	8	SW NE	900	6.00	10-16-1978	1.
						156.72		

CONCLUSIONS OF LAW

1. The temporary transfer application submitted by Hale Brothers Farms, Inc. included the information required by ORS 540.520(2).
2. The temporary transfer application submitted by Hale Brothers Farms, Inc was accompanied by the appropriate fees as set forth in ORS 536.050.
3. The proposed transfer complies with the requirements of ORS 540.523.
4. The Director should approve the transfer because the petition satisfies the criteria and requirements of ORS 540.520(2) and ORS 540.523 resulting in no injury to other water rights.

ORDER

It is hereby ORDERED:

1. The proposed changes to the existing water rights may be made provided the following conditions are met by the water user:
 - a. The change is temporary. The change shall be effective for the 2003 irrigation season upon issuance of this order
 - b. The former place of use shall **not** be irrigated as part of this water right during the 2003 irrigation season.
 - c. The water user shall not use water authorized under Permit 51017 on any lands described by this transfer in the NE ¼ of Section 5, T2N, R28E (described on the application map as Circle #86), during the 2003 irrigation season. Nor shall the water use authorized under Permit 51017 for those same lands be subject to transfer during the 2003 irrigation season.
 - d. The water user shall not use water authorized under Permit 46499 on any lands described by this transfer (being either the authorized place of use or proposed place of use)
 - e. The use shall revert to the authorized place of use at the end of the 2003 irrigation season.
 - f. All restrictions and limitations contained in the decree or permit of the subject rights will apply to the lands described by the change in place of use. Water use from wells in the Butter Creek and Stage Gulch Critical Ground Water Areas subject to allocation under OAR Chapter 690, Division 507 shall not exceed any limitations imposed by administrative rule.

Dated APR 10 2003



for Thomas J. Paul, Administrator
Field Services Division