BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)T-9819, Washington County, Oregon))

FINAL ORDER APPROVING TEMPORARY CHANGES IN PLACE OF USE AND POINT OF DIVERSION

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 or 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

Baggenstos Farms, Inc. c/o Jim Baggenstos 15801 SW Roy Rogers Road Sherwood, Oregon 97140

Findings of Fact

- 1. Baggenstos Farms, Inc. filed an application to temporarily transfer the place of use and point of diversion under Certificate 23580 for a period of five years. The Department assigned the application number T-9819.
- 2. The portion of the right to be transferred is as follows:

Certificate:	23580 in the name of John A. Baggenstos
Use:	Irrigation
Priority Date:	January 30, 1952
Quantity:	0.65 cubic foot per second (cfs)
Rate/Duty:	1/80 cfs per acre, not to exceed 2.5 acre-feet per acre
Acres:	52.0
Source:	Tualatin River, tributary to Willamette River
Authorized Po	int of Diversion:

Township		Ra	nge	Meridian	Sec	1/4 1/4	Lot	
2	S	1	W	W.M.	7	SW SW	1600	

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.

T-9819.bw

Page 1 of 3

Special Order Volume 63, Page 50.5

Authorized Place of Use:

Township		Range		Meridian	Sec	1/4 1/4		Lot	Acres
2	S	1	W	W.M.	7	SE	SW	1401	12.7
2	S	1	W	W.M.	7	NE	SE	1402 &1402	35.2
2	S	1	W	W.M.	7	SW	SE	1401	4.1

3. Application T-9819 proposes to change the place of use of the right to:

Town	Township		nge	Meridian Sec 1/4 1/4		1/4 1/4		1/4 1/4		1/4 1/4		1/4 1/4		Lot	Acres
2	S	2	W	W.M.	24	NW	NW	700 & 701	26.3						
2	S	2	W	W.M.	24	NE	NW	600	25.7						

4. As is necessary to convey the water to the proposed temporary place of use, Application T-9819 also proposes to move the authorized point of diversion to:

Township		Range		Meridian	Sec	1/4 1/4	Lot
2	S	2	W	W.M.	13	SW NW	300

- 5. Notice of the application for temporary transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice. However, the Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens.
- 6. Water has been used within the last five years according to the terms and conditions of the right and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- 7. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
- 8. The proposed change would not result in enlargement of the right.
- 9. 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 and point of diversion proposed in application T-9819 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

T-9819.bw

Page 2 of 3

Special Order Volume 63, Page509

Now, therefore, it is ORDERED:

- The changes in place of use and point of diversion proposed in application T-9819 are 1. approved.
- The former place of use shall not be irrigated as part of this water right during the 2005, 2. 2006, 2007, 2008 and 2009 irrigation seasons.
- The use shall revert to the authorized place of use at the end of the 2009 irrigation season. 3.
- The approval of this temporary transfer may be revoked or modified if the Department finds 4. the change causes injury to any existing water right.
- The use of water at the temporary place of use authorized by this transfer shall be in 5. accordance with the terms and conditions of Certificate 76256.
- The time during which water is used under this approved temporary transfer does not apply 6. toward a finding of forfeiture under ORS 540.610.
- When required by the Department, the water user shall install an in-line flow meter or other 7. suitable device for measuring and recording the quantity of water used. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
- The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, 8. at the new point of diversion. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction, and shall be installed under the supervision of the Department of Fish and Wildlife. The water user may participate in the Department of Fish and Wildlife's cost-sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.
- 9. The use of the remaining water right described by Certificate 23580 shall continue to be in accordance with the terms and conditions of Certificate 23580.

Dated at Salem, Oregon this **28**th day of March, 2005.

-Phillip C. Ward, Director

Mailing date:	APR	0	5	2005

T-9819.bw

Page 3 of 3

Special Order Volume 63, Page 570

Now, therefore, it is ORDERED:

- 1. The changes in place of use and point of diversion proposed in application T-9819 are approved.
- 2. The former place of use **shall not** be irrigated as part of this water right during the 2005, 2006, 2007, 2008 and 2009 irrigation seasons.
- 3. The use shall revert to the authorized place of use at the end of the 2009 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. The use of water at the temporary place of use authorized by this transfer shall be in accordance with the terms and conditions of Certificate 23580.
- 6. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
- 7. When required by the Department, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water used. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
- 8. The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the new point of diversion. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction, and shall be installed under the supervision of the Department of Fish and Wildlife. The water user may participate in the Department of Fish and Wildlife's cost-sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.
- 9. The use of the remaining water right described by Certificate 23580 shall continue to be in accordance with the terms and conditions of Certificate 23580.

Dated at Salem, Oregon this <u>2</u>^{**} day of March, 2005.

-Phillip C. Ward, Director

Mailing date: APR 0 5 2005