

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

COUNTY OF UMATILLA

In the Matter of a Proposed Change) ORDER
In Place of Use of Water Within an) APPROVING A TEMPORARY
Irrigation District — TRANSFER 9672) DISTRICT TRANSFER

FINDINGS OF FACT

1. Pursuant to ORS 540.570, BUTTER CREEK IRRIGATION DISTRICT, P.O. Box 110, Hermiston, OR, 97838, petitioned the Oregon Water Resources Department to temporarily change the place of use of water within the boundaries of the irrigation district. The petition was originally received on March 5, 2004, and included the required fees.
2. The Department assigned the petition transfer application number T-9672.
3. The Department published notice of receipt of the petition in the Department's Weekly Notice dated April 20, 2004. The petition was noticed as a temporary transfer within irrigation district boundaries.
4. No comments or timely protests were received in response to the published notice.
5. The following rights are proposed to be modified:
 - a) PRIMARY IRRIGATION
Certificate 80705 (T-7545): issued in the name of Butter Creek Irrigation District
Use: Irrigation
Priority Date: 1896
Rate: 1.20 cfs (irrigation of 58.0 acres)
Source: Butter Creek, tributary to the Umatilla River
Point of Diversion: NE¼ NE¼, Section 2, T 2 N, R 27 E, W.M.; 1290 Feet South and 80 Feet West from the NE Corner of Section 2.
 - b) SUPPLEMENTAL IRRIGATION
Certificate 53658: issued in the names Clausie H., Sheila, Edward N. & Alice Ammon
Use: Supplemental Irrigation

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

Priority Date: January 21, 1957

Rate: 1/80 cfs per acre irrigated

Source: Well #2

Point of Diversion: Well #2 - NE¼ SE¼, Section 2, T 2 N, R 27 E, W.M.; 100 Feet South and 130 Feet West from the E¼, Section 2.

6. Butter Creek Irrigation District petitioned to TEMPORARILY CHANGE THE PLACE OF USE from the locations identified in Table 1 to the locations listed in Table 2.

TABLE 1 - "FROM" LANDS						
					Water Right Certificates	
					Primary (acres)	Supplemental Irrigation
TWP	RNG	SEC	¼ ¼	Tax Lot	80705 (T-7545)	53658
2N	27E	1	NE NE	100	18.00	18.00
2N	27E	1	NW NE	100	40.00	40.00
TOTALS					58.00 acres	58.00 acres *

* Note: Supplemental Right Permit 46499 will not be used on these lands during the 2004 Season.

The right to use water for the above purposes is restricted to beneficial use on the lands or place of use described and is subject to all other conditions and limitations described by permit or certificate. The use also shall conform to any reasonable rotation system ordered by the proper state officer.

TABLE 2 - "TO" LANDS						
					Water Right Certificates	
					Primary (acres)	Supplemental Irrigation
TWP	RNG	SEC	¼ ¼	Tax Lot	80705 (T-7545)	53658
2N	28E	5	NE NW	900	27.50	27.50
2N	28E	5	SW NW	900	3.00	3.00
2N	28E	5	SE NW	900	27.50	27.50
TOTALS					58.00 acres	58.00 acres

7. Butter Creek Irrigation District also petitioned to TEMPORARILY CHANGE THE POINTS OF APPROPRIATION for use of water under Certificate 53658 for the lands described above to:

Hanson Well #1 - NW¼ NW¼, Section 12, T 2 N, R 27 E, W.M.; 10 Feet South and 10 Feet East from the NW Corner of Section 12; Hale Sr. Well - NE¼ NE¼, Section 7, T 2 N, R 28 E, W.M.; 1040 Feet South and 440 Feet West from the NE Corner of Section 7.

8. In continuing, the following right is proposed to be modified:

PRIMARY IRRIGATION

Certificate 53658: issued in the names Clausie H., Sheila, Edward N. & Alice Ammon

Use: Irrigation

Priority Date: January 21, 1957

Rate: 1/80 cfs per acre irrigated

Source: Well #2

Point of Diversion: Well #2 - NE¼ SE¼, Section 2, T 2 N, R 27 E, W.M.; 100 Feet South and 130 Feet West from the E¼, Section 2.

9. Butter Creek Irrigation District petitioned to TEMPORARILY CHANGE THE PLACE OF USE from the locations identified in Table 3 to the locations listed in Table 4.

TABLE 3 - "FROM" LANDS					
					Water Right Certificate (acres)
TWP	RNG	SEC	¼ ¼	Tax Lot	
					53658
2N	27E	1	NE NE	100	11.22
2N	27E	1	NE SE	100	0.30
2N	27E	1	NW SE	100	17.22
TOTALS					28.74 acres

The right to use water for the above purposes is restricted to beneficial use on the lands or place of use described and is subject to all other conditions and limitations described by permit or certificate. The use also shall conform to any reasonable rotation system ordered by the proper state officer.

TABLE 4 - "TO" LANDS					
					Water Right Certificate (acres)
TWP	RNG	SEC	¼ ¼	Tax Lot	
					53658
2N	28E	5	NW NW	900	13.96
2N	28E	8	SE NW	1501	14.78
TOTALS					28.74 acres

10. Butter Creek Irrigation District also petitioned to TEMPORARILY CHANGE THE POINT OF APPROPRIATION for use of water under Certificate 53658 for the lands described above to:

Hanson Well #1 - NW¼ NW¼, Section 12, T 2 N, R 27 E, W.M.; 10 Feet South and 10 Feet East from the NW Corner of Section 12; Hale Sr. Well - NE¼ NE¼, Section 7, T 2 N, R 28 E, W.M.; 1040 Feet South and 440 Feet West from the NE Corner of Section 7.

11. In continuing, the following right is proposed to be modified:

PRIMARY IRRIGATION

Certificate 30742: issued in the names Maynard F. Aaby & Clarence L. Hanson

Use: Irrigation

Priority Date: January 21, 1959

Rate: 1/80 cfs per acre irrigated

Source: A Well, within the Umatilla River Basin

Point of Appropriation: NW¼ NW¼, Section 12, T 2 N, R 27 E, W.M.

12. Butter Creek Irrigation District petitioned to TEMPORARILY CHANGE THE PLACE OF USE from the locations identified in Table 5 to the locations listed in Table 6.

TABLE 5 - "FROM" LANDS					Water Right Certificate (acres)
TWP	RNG	SEC	¼ ¼	Tax Lot	30742
2N	27E	1	SE SW	404	2.50
2N	27E	1	SW SE	404	13.50
2N	27E	2	SW SE	401	10.00
2N	27E	12	NW NE	400	1.50
2N	27E	12	NE NW	404, 400	20.00
TOTALS					47.50 acres

The right to use water for the above purposes is restricted to beneficial use on the lands or place of use described and is subject to all other conditions and limitations described by permit or certificate. The use also shall conform to any reasonable rotation system ordered by the proper state officer.

TABLE 6 - "TO" LANDS					Water Right Certificate (acres)
TWP	RNG	SEC	¼ ¼	Tax Lot	30742
2N	28E	5	NW NW	900	13.54
2N	28E	5	SW NW	900	24.50
2N	28E	8	NW NW	1501	9.46
TOTALS					47.50 acres

13. Butter Creek Irrigation District also petitioned to TEMPORARILY CHANGE THE POINT OF APPROPRIATION for use of water under Certificate 30742 for the lands described above to:

Ammon Well #2 - NE¼ SE¼, Section 2, T 2 N, R 27 E, W.M.; 100 Feet South and 130 Feet West from the E¼ Corner of Section 2; Hale Sr. Well - NE¼ NE¼, Section 7, T 2 N, R 28 E, W.M.; 1040 Feet South and 440 Feet West from the NE Corner of Section 7.

14. In continuing, the following right is proposed to be modified:

Permit: 51017 (Permit Amendment T-9540) issued to Kent R. and Shannon K. Madison
Use: Irrigation
Priority Date: April 2, 1990
Rate: 1/40 cfs per acre irrigated
Source: Columbia River, a tributary of the Pacific Ocean
Point of Diversion: Lot 7 (NE¼ NW¼), Section 2, T 4 N, R 25 E, W.M.; 150 Feet South and 2990 Feet West from the NE Corner, Section 2.

15. Butter Creek Irrigation District has stated that lands described below under Permit 51017 will not be used during the 2004 Irrigation Season to allow for incoming District rights.

Permit 51017 Authorized Place of Use					Water Right Permit (acres)
TWP	RNG	SEC	¼ ¼	Tax Lot	51017
2N	28E	5	NE NW	900	27.50
2N	28E	5	NW NW	900	27.50
2N	28E	5	SW NW	900	27.50
2N	28E	5	SE NW	900	27.50
TOTALS					110.00 acres

16. In continuing, the following rights are proposed to be modified:

a) PRIMARY IRRIGATION

Certificate 63802: issued in the name of Hale Brothers Farms

Use: Irrigation

Priority Date: 1896

Rate: 0.779 cubic foot per second

Source: Butter Creek, tributary to Umatilla River

Point of Diversion: SW¼ NE¼, Section 11, T 2 N, R 27 E, W.M.; 1330 Feet South and 270 Feet East from the N¼ Corner of Section 11.

b) SUPPLEMENTAL IRRIGATION

Permit 46499: issued in the name of John Madison

Use: Supplemental Irrigation

Priority Date: October 16, 1978

Rate: 1/50 cfs per acre irrigated (limited to a season September 2 to December 30)

Source: Butter Creek, tributary to Umatilla River

Point of Diversion: SW¼ NE¼, Section 11, T 2 N, R 27 E, W.M.; 1330 Feet South and 270 Feet East from the N¼ Corner, Section 11.

17. Butter Creek Irrigation District petitioned to TEMPORARILY CHANGE THE PLACE OF USE from the location identified in Table 7 to the locations listed in Table 8.

TABLE 7 - "FROM" LANDS						
					Water Right Certificates	
					Primary (acres)	Supplemental Irrigation
TWP	RNG	SEC	¼ ¼	Tax Lot	63802	Permit 46499
2N	27E	11	NE SW	1400, 1401	40.00	WILL NOT BE USED
						DURING 2004 SEASON
TOTALS					40.00 acres	40.00 acres *

* Note: Supplemental Right Permit 46499 will not be used on these lands during the 2004 Season.

The right to use water for the above purposes is restricted to beneficial use on the lands or place of use described and is subject to all other conditions and limitations described by permit or certificate. The use also shall conform to any reasonable rotation system ordered by the proper state officer.

TABLE 8 - "TO" LANDS					
					Water Right Certificate (acres)
TWP	RNG	SEC	¼ ¼	Tax Lot	63802
2N	28E	8	NE NW	1501	27.50
2N	28E	8	NW NW	1501	7.26
2N	28E	8	SE NW	1501	5.24
TOTALS					40.00 acres

18. In continuing, the following rights are proposed to be modified:

a) PRIMARY IRRIGATION

Certificate 63802: issued in the name of Hale Brothers Farms

Use: Irrigation

Priority Date: 1896

Rate & Duty: 0.89 cubic foot per second

Source: Butter Creek, tributary to Umatilla River

Point of Diversion: SW¼ NE¼, Section 11, T 2 N, R 27 E, W.M.; 1330 Feet South and 270 Feet East from the N¼ Corner of Section 11.

b) SUPPLEMENTAL IRRIGATION

Certificate 30742: issued in the names Maynard F. Aaby & Clarence L. Hanson

Use: Supplemental Irrigation

Priority Date: January 21, 1959

Rate: 1/80 cfs per acre irrigated

Source: A Well, within the Umatilla River Basin

Point of Diversion: NW¼ NW¼, Section 12, T 2 N, R 27 E, W.M.

c) SUPPLEMENTAL IRRIGATION

Permit 46499: issued in the name of John Madison

Use: Supplemental Irrigation

Priority Date: October 16, 1978

Rate: 1/50 cfs per acre irrigated (limited to a season September 2 to December 30)

Source: Butter Creek, tributary to Umatilla River

Point of Diversion: SW¼ NE¼, Section 11, T 2 N, R 27 E, W.M.; 1290 Feet South and 80 Feet West from the NE Corner, Section 2

19. Butter Creek Irrigation District petitioned to TEMPORARILY CHANGE THE PLACE OF USE from the locations identified in Table 9 to the locations listed in Table 10.

TABLE 9 - "FROM" LANDS							
					Water Right Certificates		
					Primary (acres)	Supplemental	Supplemental
TWP	RNG	SEC	¼ ¼	Tax Lot	63802	30742	Permit 46499
2N	27E	1	SW SE	404	1.76	1.76	WILL NOT BE USED DURING 2004 SEASON
2N	27E	2	SW SE	401	23.00	23.00	
2N	27E	11	NW NE	401	21.00	21.00	
TOTALS					45.76 acres *		

* Note: Supplemental Right Permit 46499 will not be used on these lands during the 2004 Season.

The right to use water for the above purposes is restricted to beneficial use on the lands or place of use described and is subject to all other conditions and limitations described by permit or certificate. The use also shall conform to any reasonable rotation system ordered by the proper state officer.

TABLE 10 - "TO" LANDS							
					Water Right Certificates		
					Primary (acres)	Supplemental	Supplemental
TWP	RNG	SEC	¼ ¼	Tax Lot	63802	30742	Permit 46499
2N	28E	8	NW NW	1501	10.78	10.78	WILL NOT BE USED DURING 2004 SEASON
2N	28E	8	SW NW	1501	27.50	27.50	
2N	28E	8	SE NW	1501	7.48	7.48	
TOTALS					45.76 acres		

20. In continuing, the following right is proposed to be modified:

PRIMARY IRRIGATION

Certificate 44654: issued in the name of Larry Hanson

Use: Irrigation

Priority Date: September 3, 1968

Rate: 1/80 cfs per acre irrigated

Source: A Well, within the Butter Creek Basin

Point of Diversion: NE¼ NE¼, Section 7, T 2 N, R 28 E, W.M.; 1040 Feet South and 440 Feet West from the NE Corner, Section 7.

21. Butter Creek Irrigation District stated in their petition that water use under this water right WILL NOT BE USED DURING THE 2004 IRRIGATION SEASON, allowing for the incoming TEMPORARY CHANGE in PLACE OF USE of a portion of the above listed rights.
22. Pursuant to ORS 540.574 and ORS 540.570, in reviewing the petition submitted by Butter Creek Irrigation District, the Department has determined the following:
 - a) The petition contains the information required under ORS 540.574(3).
 - b) The petition meets the requirements of ORS 540.570.
 - c) The petition contains maps which are satisfactory to the Department and which the District certified as being accurate.
 - d) The petition includes the required statement from the District that it has on file, and available for review, written authorization from each landowner affected by the transfer.
 - e) The rate, duty, and total number of acres proposed for transfer do not exceed that of the water right subject to transfer.
 - f) The use authorized by the water right subject to transfer will not change; and
 - g) The proposed change in place of use will not result in injury to other water rights.

CONCLUSIONS OF LAW

1. The petition submitted by Butter Creek Irrigation District proposing temporary changes in place of use within district boundaries includes the information, and satisfies the criteria, required by ORS 540.574(3).
2. The proposed transfer complies with the requirements of ORS 540.570.
3. The Director should approve the transfer because the petition satisfies the criteria and requirements of ORS 540.574(3) and ORS 540.570 resulting in no injury to other water rights.

ORDER

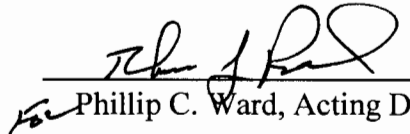
It is hereby ORDERED :

1. The proposed temporary changes to the water rights evidenced by Water Right Certificates 80705, 53658, 30742, 63802, Permits 51017 and 46499 may be made for the 2004 irrigation season provided the following conditions are met by the water user:
 - a) The FROM lands shall receive no water under the rights involved with this transfer for the 2004 irrigation season.
 - b) The use of water under water right Certificates 80705, 53658, 30742, 63802 on both the

TO and FROM lands during the 2004 irrigation season or calendar year, is prohibited and may subject both the district and landowner to civil penalties.

- c) The use of water on lands described in *Findings of Fact 15, 19 and 20*, under permits 51017 and 46499, is prohibited during the 2004 Irrigation Season.
 - d) All restrictions and limitations contained in the subject rights and Butter Creek Decree shall apply to the TO lands.
 - e) Pursuant to 540.570 (5), the Department may further condition or revoke this temporary transfer, to the extent necessary to avoid injury, at any time the department finds the transfer is causing injury to an existing water right.
2. Pursuant to 540.570 (6), upon expiration of the 2004 irrigation season, all uses of water for which a temporary transfer is allowed under this section shall revert automatically to the terms and conditions of the original water right permit, certificate or adjudication proceeding under ORS chapter 539 as evidenced by a court decree.

WITNESS the signature of the Water Resources Director affixed July 14, 2004.



For Phillip C. Ward, Acting Director