

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A
T-11668, Malheur County	)	TEMPORARY CHANGES IN PLACE
	)	OF USE AND POINT 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**

GREG AMARAL TRUSTEE OF THE GREG  
AMARAL LTD. PENSION PLAN AND TRUST  
1606 AMARAL COURT  
FAIRFIELD, CA 94534

**Agent**

SPF WATER ENGINEERING, LLC  
ATTN: LORI GRAVES  
300 E MALLARD DR. STE 350  
BOISE, ID 83706

**Findings of Fact**

1. On September 26, 2013, Greg Amaral filed an application to temporarily change the place of use and to change the point of diversion to serve the proposed place of use under Certificate 7049 for a period of 5 years. The Department assigned the application number T-11668.
2. Notice of the application for transfer was published on October 8, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. Water Right Certificate 74080 is a primary water right which is situated at the same location as a portion of the proposed place of use requested under T-11668.
4. The portion of the first right to be temporarily transferred is as follows:

**Certificate:** 7049 in the name of ELLA WOODRUFF (confirmed by Malheur River Decree)

**Use:** IRRIGATION of 65.0 ACRES

**Priority Date:** 1884

<p>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.</p>
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**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of 1½ acre feet per acre in any 30 day period prior to June 1<sup>st</sup>, 1.0 acre foot per acre in any 30 day period after June 1<sup>st</sup>, of each year or 3.0 acre feet per acre during any season, diverted at a rate not to exceed ONE-TWENTIETH of one cubic foot per second per acre.

**Source:** BULLY CREEK within the MALHEUR RIVER BASIN

**Authorized Point of Diversion or Appropriation:**

DITCH NAME
HARRIS DITCH

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
19 S	44 E	WM	4	NE NW	21.0
19 S	44 E	WM	4	NW NW	40.0
19 S	44 E	WM	4	SW NW	4.0
Total Acres:					65.0

5. Temporary Transfer Application T-11668 proposes to temporarily change the place of use. On November 7, 2013, the agent requested to diminish a portion of the right under Certificate 7049 that will be situated within the same location as the place of use of Certificate 74080. The proposed place of use and portion of the diminishment is as follows:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Lot	Acres	Use
19 S	44 E	WM	4	NE NW	3	7.7	Primary
19 S	44 E	WM	4	NE NW	3	4.3	Supplemental
19 S	44 E	WM	4	NW NW	4	23.3	Primary
19 S	44 E	WM	4	NW NW	4	15.7	Supplemental
19 S	44 E	WM	4	SW NW		1.0	Primary
19 S	44 E	WM	5	NE NE	1	12.0	Primary
19 S	44 E	WM	5	SE NE		1.0	Primary
Total Acres:						65.0	

6. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-11668 proposes to move the authorized point of diversion Approximately 2.5 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Lot	Measured Distances
19 S	44 E	WM	4	NE NW	3	55 FEET SOUTH AND 1730 FEET EAST FROM THE NW CORNER OF SECTION 4

7. Temporary Transfer Application T-11688 proposes to temporarily transfer a water right within the boundaries of Vale Irrigation District. The district was notified of the proposed temporary transfer and indicated that the district did not object to the transfer as long as the applicant agreed that the proposed senior water right from Certificate 7049 (priority date 1884) would not be superior to the underlying junior water use permit S-29882 (priority date August 7, 1936) from Bully Creek and Bully Creek Reservoir.
8. On November 7, 2013 and November 14, 2013, the agent submitted an e-mail which acknowledged and agreed to additional conditions making the senior right Certificate 7049 subordinate to the junior permit S-29882 on the proposed place of use.

#### ***Temporary Transfer Review Criteria***

9. Water has been used within the last five years according to the terms and conditions of the right. There is no evidence available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
10. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
11. The proposed changes would not result in enlargement of the right.
12. 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 changes in place of use and points of diversion to convey water to the temporary place of use proposed in application Temporary Transfer Application T-11668 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

#### **Now, therefore, it is ORDERED:**

1. The temporary changes in place of use and point of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-11668 is approved.
2. The former place of use **shall not** be irrigated as part of this water right during the 2014, 2015, 2016, 2017, and 2018 irrigation season.
3. Certificate 7049 shall be subordinate to the underlying junior permit S-29882.
4. The use shall revert to the authorized place of use at the end of the 2018 irrigation season. The authorization to use the proposed point of diversion shall be terminated concurrently.
5. The approval of this temporary transfer may be revoked or modified if the Department finds the changes cause injury to any existing water right.

6. A subsequent application for permanent transfer of Certificate 7049 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.
7. 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 7049.
8. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
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 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 right described by Certificate 7049 shall continue to be in accordance with the terms and conditions of Certificate 7049.

Dated at Salem, Oregon this 28 day of November, 2013.

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

Mailing Date: DEC 03 2013