

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

In the Matter of Transfer Application) **F I N A L O R D E R**
T-10128, Umatilla County) **APPROVING A DISTRICT**
) **TEMPORARY TRANSFER**

ORS 540.570 establishes the process in which a district may submit a request to temporarily transfer a water right within district boundaries. OAR Chapter 690, Division 385 implements the statutes and provides the Department's procedures and criteria for evaluating district transfer applications.

Applicant

Butter Creek Irrigation District
P.O. Box 110
Hermiston, OR 97838

Findings of Fact

1. On April 13, 2006, Butter Creek Irrigation District filed a district transfer application to temporarily change the place of use, and the type of use from irrigation to supplemental irrigation. The Department assigned the application number T-10128.
2. Notice of the application for transfer was published pursuant to ORS 540.580 and OAR 690-385-3400. No comments were filed in response to the notice.
3. Pursuant to OAR 690-385-3130 the applicant applied to temporarily change the type of use of the water rights proposed for transfer under Certificates 80705, 81408, 81409, and 63802 from irrigation to supplemental irrigation. Permit 51017 is the authorized irrigation water right at the proposed place of use.
4. The portion of the first water right to be transferred is as follows:

Certificate: 80705, issued in the name of Butter Creek Irrigation District
Use: Irrigation
Priority Date: 1896
Rate & Duty: 0.26 cubic foot per second
Source: Butter Creek, tributary to Umatilla River

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.

Authorized Point of Diversion:

TWP	RNG	MER	SEC	1/4 - 1/4	SURVEY COORDINATES
2 N	27 E	WM	2	NE SE	50 feet South and 350 feet West from E $\frac{1}{4}$ Corner of Section 2

Authorized Place of Use:

TWP	RNG	MER	SEC	1/4 - 1/4	TL	ACRES	USER
2 N	27 E	WM	1	NW SW	200	4.00	HALE BROS. FARMS
2 N	27 E	WM	2	SE NE	200	0.70	HALE BROS. FARMS
2 N	27 E	WM	2	NE SE	200	2.90	HALE BROS. FARMS
2 N	27 E	WM	2	NW SE	200	6.00	HALE BROS. FARMS
TOTAL:						13.60	

5. Application T-10128 proposes to temporarily change the type of use of the water right from irrigation to supplemental irrigation and change the place of use of the right to:

DIMINISHED TO SUPPLEMENTAL IRRIGATION							
TWP	RNG	MER	SEC	1/4 - 1/4	TL	ACRES	USER
3 N	28 E	WM	32	NW SW	9000	13.60	HALE BROS. FARMS

6. The portion of the second water right to be transferred is as follows:

Certificate: 81408, issued in the name of Hale Brothers Farms

Use: Supplemental Irrigation

Priority Date: January 21, 1957

Rate & Duty: 1/80 cfs per acre irrigated not to exceed 3.0 acre-feet per acre per year

Source: Wells in Butter Creek Basin

Authorized Points of Appropriation:

TWP	RNG	MER	SEC	1/4 - 1/4	SURVEY COORDINATES
2 N	27 E	WM	2	NESE	Ammon Well #2 – 100 feet South and 130 feet West from E $\frac{1}{4}$ Corner of Section 2
2 N	27 E	WM	12	NWNW	Hanson Well #1 – 10 feet South and 10 feet East from NW Corner of Section 12
2 N	27 E	WM	7	NENE	Hale Sr. Well – 1040 feet South and 440 feet West from NE Corner of Section 7

Authorized Place of Use:

TWP	RNG	MER	SEC	1/4 - 1/4	TL	ACRES	USER
2 N	27 E	WM	1	NW SW	200	4.00	HALE BROS. FARMS
2 N	27 E	WM	2	SE NE	200	0.70	HALE BROS. FARMS
2 N	27 E	WM	2	NE SE	200	2.90	HALE BROS. FARMS
2 N	27 E	WM	2	NW SE	200	6.00	HALE BROS. FARMS
TOTAL:						13.60	

7. Application T-10128 proposes to temporarily change the place of use of the right to:

TWP	RNG	MER	SEC	1/4 - 1/4	TL	ACRES	USER
3 N	28 E	WM	32	NW SW	9000	13.60	HALE BROS. FARMS

8. The portion of the third water right to be transferred is as follows:

Certificate: 81408, issued in the name of Hale Brothers Farms

Use: Irrigation

Priority Date: January 21, 1957

Rate & Duty: 1/80 cfs per acre irrigated not to exceed 3.0 acre-feet per acre per year

Source: Wells within the Butter Creek Basin

Authorized Points of Appropriation:

TWP	RNG	MER	SEC	1/4 - 1/4	SURVEY COORDINATES
2 N	27 E	WM	2	NE SE	Ammon Well #2 – 100 feet South and 130 feet West from E¼ Corner of Section 2
2 N	27 E	WM	12	NW NW	Hanson Well #1 – 10 feet South and 10 feet East from NW Corner of Section 12
2 N	28 E	WM	7	NE NE	Hale Sr. Well – 1040 feet South and 440 feet West from NE Corner of Section 7

Authorized Place of Use:

TWP	RNG	MER	SEC	1/4 – 1/4	TL	ACRES	USER
2 N	27E	WM	1	NE NE	100	11.22	HALE BROS. FARMS
2 N	27 E	WM	1	SW NE	100	0.81	HALE BROS. FARMS
2 N	27 E	WM	1	SE NE	100	7.39	HALE BROS. FARMS
2 N	27 E	WM	1	NE SE	100	0.30	HALE BROS. FARMS
2 N	27 E	WM	1	NW SE	100	17.22	HALE BROS. FARMS
2 N	27 E	WM	2	SW NE	100	6.70	HALE BROS. FARMS
2 N	27 E	WM	2	SE NE	100	10.50	HALE BROS. FARMS
2 N	27 E	WM	2	NE SE	100	1.20	HALE BROS. FARMS
2 N	27 E	WM	2	NW SE	100	17.60	HALE BROS. FARMS
TOTAL:						72.94	

9. Application T-10128 proposes to temporarily change the type of use of the water right from irrigation to supplemental irrigation and change the place of use of the right to:

DIMINISHED TO SUPPLEMENTAL IRRIGATION							
TWP	RNG	MER	SEC	1/4 – 1/4	TL	ACRES	USER
3 N	28 E	W.M.	32	NW SW	9000	3.16	HALE BROS. FARMS
3 N	28 E	W.M.	32	SW SW	9000	27.50	HALE BROS. FARMS
3 N	28 E	W.M.	32	SE SW	9000	27.50	HALE BROS. FARMS
2 N	28 E	W.M.	5	SE NE	900	14.78	HALE BROS. FARMS
TOTAL:						72.94	

10. The portion of the fourth water right to be transferred is as follows:

Certificate: 81409, issued in the name of Hale Brothers Farms

Use: Irrigation

Priority Date: January 21, 1959

Rate & Duty: 1/80 cfs per acre irrigated not to exceed 3.0 acre-feet per acre per year

Source: Wells within Umatilla River Basin

Authorized Points of Appropriation:

TWP	RNG	MER	SEC	1/4 - 1/4	SURVEY COORDINATES
2 N	27 E	WM	2	NE SE	Ammon Well #2 – 100 feet South and 130 feet West from East ¼ Corner of Section 2
2 N	27 E	WM	12	NW NW	Hanson Well #1 – 10 feet South and 10 feet East from NW Corner of Section 12
2 N	28 E	WM	7	NE NE	Hale Sr. Well – 1040 feet South and 440 feet West from NE Corner of Section 7

Authorized Place of Use:

TWP	RNG	MER	SEC	1/4 – 1/4	TL	ACRES	USER
2 N	27 E	WM	1	SE SW	404	2.50	HALE BROS. FARMS
2 N	27 E	WM	1	SW SE	404	13.50	HALE BROS. FARMS
2 N	27 E	WM	2	SW SE	401	10.00	HALE BROS. FARMS
2 N	27 E	WM	12	NW NE	400	1.50	HALE BROS. FARMS
2 N	27 E	WM	12	NE NW	404,400	20.00	HALE BROS. FARMS
TOTAL:						47.50	

11. Application T-10128 proposes to temporarily change the type of use of the water right from irrigation to supplemental irrigation and change the place of use of the right to:

DIMINISHED TO SUPPLEMENTAL IRRIGATION							
TWP	RNG	MER	SEC	1/4 – 1/4	TL	ACRES	USER
3 N	28 E	WM	32	NE SW	9000	27.50	HALE BROS. FARMS
3 N	28 E	WM	32	NW SW	9000	10.54	HALE BROS. FARMS
2 N	28 E	WM	5	NW NE	900	9.46	HALE BROS. FARMS
TOTAL:						47.50	

12. The portion of the fifth water right to be transferred is as follows:

Certificate: 63802, issued in the name of Hale Bothers Farms

Use: Irrigation

Priority Date: 1896

Rate & Duty: 0.78 cubic feet per second not to exceed 4.0 acre-feet per acre per year

Source: Butter Creek, tributary to Umatilla River

Authorized Point of Diversion:

TWP	RNG	MER	SEC	1/4 - 1/4	SURVEY COORDINATES
2 N	27 E	WM	11	SW NE	Butter Creek – 1330 feet South and 270 feet East from N¼ Corner of Section 11

Authorized Place of Use:

TWP	RNG	MER	SEC	1/4 – 1/4	TL	ACRES	USER
2 N	27 E	WM	11	NE SW	1400/ 1401	40.00	HALE BROS. FARMS

13. Application T-10128 proposes to temporarily change the type of use of the water right from irrigation to supplemental irrigation and change the place of use of the right to:

DIMINISHED TO SUPPLEMENTAL IRRIGATION							
TWP	RNG	MER	SEC	1/4 – 1/4	TL	ACRES	USER
2 N	28 E	WM	5	NE NE	900	27.50	HALE BROS. FARMS
2 N	28 E	WM	5	NW NE	900	7.26	HALE BROS. FARMS
2 N	28 E	WM	5	SE NE	900	5.24	HALE BROS. FARMS
TOTAL:						40.00	

14. The portion of the sixth water right to be transferred is as follows:

Certificate: 63802, issued in the name of Hale Bothers Farms

Use: Irrigation

Priority Date: 1896

Rate & Duty: 0.89 cubic feet per second not to exceed 4.0 acre-feet per acre per year

Source: Butter Creek, tributary to Umatilla River

Authorized Point of Diversion:

TWP	RNG	MER	SEC	1/4 - 1/4	SURVEY COORDINATES
2 N	27 E	WM	11	SW NE	Butter Creek – 1330 feet South and 270 feet East from N¼ Corner of Section 11

Authorized Place of Use:

TWP	RNG	MER	SEC	1/4 – 1/4	TL	ACRES	USER
2 N	27 E	WM	1	SW SE	404	1.76	HALE BROS. FARMS
2 N	27 E	WM	2	SW SE	401	23.00	HALE BROS. FARMS
2 N	27 E	WM	11	NW NE	401	21.00	HALE BROS. FARMS
TOTAL:						45.76	

15. Application T-10128 proposes to temporarily change the type of use of the water right from irrigation to supplemental irrigation and change the place of use of the right to:

DIMINISHED TO SUPPLEMENTAL IRRIGATION							
TWP	RNG	MER	SEC	1/4 – 1/4	TL	ACRES	USER
2 N	27 E	WM	1	SW SE	404	1.76	HALE BROS. FARMS
2 N	27 E	WM	2	SW SE	401	23.00	HALE BROS. FARMS
2 N	27 E	WM	11	NW NE	401	21.00	HALE BROS. FARMS
TOTAL:						45.760	

16. The portion of the seventh water right to be transferred is as follows:

Certificate: 81409, issued in the name of Hale Brothers Farms

Use: Supplemental Irrigation

Priority Date: January 21, 1959

Rate & Duty: 1/80 cfs per acre irrigated not to exceed 3.0 acre-feet per acre per year

Source: Wells within Umatilla River Basin

Authorized Points of Appropriation:

TWP	RNG	MER	SEC	1/4 - 1/4	SURVEY COORDINATES
2 N	27 E	WM	2	NE SE	Ammon Well #2 – 100 feet South and 130 feet West from E ¼ Corner of Section 2
2 N	27 E	WM	12	NW NW	Hanson Well #1 – 10 feet South and 10 feet East from NW Corner of Section 12
2 N	28 E	WM	7	NE NE	Hale Sr. Well – 1040 feet South and 440 feet West from NE Corner of Section 7

Authorized Place of Use:

TWP	RNG	MER	SEC	1/4 – 1/4	TL	ACRES	USER
2 N	27 E	WM	1	SW SE	404	1.76	HALE BROS. FARMS
2 N	27 E	WM	2	SW SE	401	23.00	HALE BROS. FARMS
2 N	27 E	WM	11	NW NE	401	21.00	HALE BROS. FARMS
TOTAL:						45.76	

17. Application T-10128 proposes to temporarily change the place of use of the right to:

TWP	RNG	MER	SEC	1/4 – 1/4	TL	ACRES	USER
2 N	27 E	WM	1	SW SE	404	1.76	HALE BROS. FARMS
2 N	27 E	WM	2	SW SE	401	23.00	HALE BROS. FARMS
2 N	27 E	WM	11	NW NE	401	21.00	HALE BROS. FARMS
TOTAL:						45.76	

18. The water rights are subject to transfer as defined in OAR 690-385-0100(17).

19. The proposed changes in place of use would not result in enlargement of the rights.

20. The proposed changes would not result in injury to other water rights.

Conclusions of Law

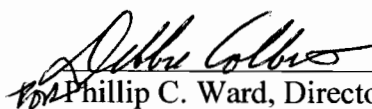
The proposed changes in application T-10128 satisfy the requirements of ORS 540.574(3) and 540.570.

Now, therefore, it is ORDERED:

1. The proposed changes to the water rights evidenced by Certificates 80705, 81408, 81409 and 63802 are approved.

2. The temporary transfer is effective for the 2006 irrigation season.
3. The right to the use of the water is restricted to beneficial use at the new temporary place of use described and is subject to all other conditions and limitations contained in Certificates 80705, 81408, 81409 and 63802 and any related decree.
4. Pursuant to OAR 690-385-3130, the use of water under Certificates 80705, 81408, 81409 and 63802 for supplemental irrigation at the new temporary place of use shall not exceed the maximum rate and duty prescribed by Permit 51017. The use of water under Certificates 80705, 81408, 81409 and 63802 at the new temporary place of use may be used only to make up a deficiency in supply for Permit 51017.
5. The applicant shall not use water under Permit 46499 during the 2006 irrigation season at the authorized place of use.
6. The use of water on the lands from which the water right is transferred and at the new temporary place of use during the same irrigation season or calendar year is prohibited and may subject the district and landowner to civil penalties.
7. The use of water under this temporary transfer may be conditioned or revoked at any time to the extent necessary to avoid injury if the Department finds the transfer causes injury to any existing water right.
8. At the end of the 2006 irrigation season all uses of water under this temporary transfer revert automatically to the terms and conditions of the original water right permit, certificate, or adjudication as evidenced by a court decree.

Dated at Salem, Oregon this 25th day of May, 2006.


Phillip C. Ward, Director

Mailing Date: JUN 01 2006