# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application	)	FINAL ORDER APPROVING
T-11379, Morrow County	)	TEMPORARY CHANGES IN PLACE
	)	OF USE AND POINTS 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

HALE FARMS LLC 73120 HWY 207 ECHO, OR 97826

### **Findings of Fact**

- 1. On March 20, 2012, HALE FARMS LLC filed an application to temporarily change the places of use and change the points of diversion to serve the proposed places of use under Certificates 79482 and 87111 for a period of 1 year. The Department assigned the application number T-11379.
- 2. On April 17, 2012, Craig Reeder, representing the applicant, stated via e-mail that the duty to be transferred under Certificate 79482 will be 4.0 acre-foot (AF) per acre, which is 0.5 AF less than the full duty of 4.5 AF.
- 3. On April 26, 2012, the Department communicated questions and requests for additional information to the applicant and agent via e-mail. The agent responded to clarify that during the term of the transfer, Permit S-54561 is not proposed to be used on the transfer lands, acknowledged a scrivener's error in the application and submitted a consent letter from Columbia Improvement District.
- 4. On April 27, 2012, the agent submitted a Form D, indicating Butter Creek Irrigation District's approval.

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.

5. On May 15, 2012, the applicant submitted a statement of consent from Madison Farms, and on May 18<sup>th</sup> a letter of consent from Boardman Tree Farm.

6. The portion of the first right to be temporarily transferred is as follows:

Certificate: 79482 in the name of POTLATCH CORP. (perfected under Permit S-36940)

Use: IRRIGATION of 256.4 ACRES

Priority Date: JUNE 29, 1973

Rate: 6.34 CUBIC FEET PER SECOND

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 ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each

year.

**Source:** COLUMBIA RIVER a tributary of the PACIFIC OCEAN

#### **Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	NE NW	7	POTLATCH PATERSON FARM POD: SOUTH 86 DEGREES 22 MINUTES 46 SECONDS WEST, 2829 FEET FROM THE NE CORNER OF SECTION 2

#### **Authorized Place of Use:**

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres			
4 N	26 E	WM	29	SW SW	1.70			
4 N	26 E	WM	31	NE NE	19.10			
4 N	26 E	WM	31	SE NE	16.00			
4 N	26 E	WM	31	NE SE	20.20			
4 N	26 E	WM	31	SE SE	17.50			
4 N	26 E	WM	32	NE NW	8.50			
4 N	26 E	WM	32	NW NW	39.11			
4 N	26 E	WM	32	SW NW	36.50			
4 N	26 E	WM	32	SE NW	6.53			
4 N	26 E	WM	32	NE SW	8.30			
4 N	26 E	WM	32	NWSW	39.35			
4 N	26 E	WM	32	SW SW	37.21			
4 N	26 E	WM	32	SE SW	6.40			
				TOTAL	256.4			

7. Temporary Transfer Application T-11379 proposes to temporarily change the place of use of the right to:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres			
2 N	28 E	WM	5	NE NE	32.1			
2 N	28 E	WM	5	NW NE	32.1			
2 N	28 E	WM	5	SW NE	32.1			

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres			
2 N	28 E	WM	5	SE NE	32.1			
2 N	28 E	WM	5	NENW	32.0			
2 N	28 E	WM	5	NW NW	32.0			
2 N	28 E	WM	5	SWNW	32.0			
2 N	28 E	WM	5	SE NW	32.0			
				TOTAL	256.4			

8. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-11379 proposes to move the authorized point of diversion a few feet to the west (downstream) side of the shared diversion platform:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	NE NW	7	COLUMBIA IMPROVEMENT DISTRICT POD: 150 FEET SOUTH AND 2990 FEET WEST FROM THE NE CORNER OF SECTION 2

The portion of the second right to be temporarily transferred is as follows:

Certificate: 87111 in the name of HALE FARMS LLC (perfected under Permit

S-37121)

Use: IRRIGATION of 256.4 ACRES

Priority Date: OCTOBER 3, 1973 plus one minute and DECEMBER 11, 1973 plus one

minute

Rate: 2.77 CUBIC FEET PER SECOND (CFS), being 2.18 cfs priority October 3,

1973 plus one minute and 0.59 cfs priority December 11, 1973 plus one

minute

**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 ONE-SIXTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year, (not to exceed a pro-rated total duty of 606.7 AF priority October 3, 1973 plus one minute and 162.5 AF priority December 11, 1973 plus one

minute).

**Period of Use:** March 1 through October 31

**Source:** COLUMBIA RIVER a tributary of the PACIFIC OCEAN

#### **Authorized Point of Diversion:**

	Twp	Rng	Mer	Sec	Q-Q	Measured Distances	
ı	5 N	30 E	WM	8	SW NW	HUTTERITE POD: 2910 FEET NORTH AND 120	
						FEET EAST FROM THE SW CORNER OF SECTION 8	

## **Authorized Place of Use:**

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres			
3 N	30 E	WM	7	NE SE	29.0			
3 N	30 E	WM	7	NW SE	28.5			
3 N	30 E	WM	7	SW SE	28.9			
3 N	30 E	WM	7	SE SE	31.3			
3 N	30 E	WM	8	SE NW	20.5			
3 N	30 E	WM	8	NE SW	31.0			
3 N	30 E	WM	8	NW SW	28.1			
3 N	30 E	WM	8	SW SW	27.5			
3 N	30 E	WM	8	SE SW	31.6			
				TOTAL	256.4			

10. Temporary Transfer Application T-11379 proposes to temporarily change the place of use of the right to:

	IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres				
4 N	26 E	WM	29	SW SW	1.70				
4 N	26 E	WM	31	NE NE	19.10				
4 N	26 E	WM	31	SE NE	16.00				
4 N	26 E	WM	31	NE SE	20.20				
4 N	26 E	WM	31	SE SE	17.50				
4 N	26 E	WM	32	NE NW	8.50				
4 N	26 E	WM	32	NW NW	39.11				
4 N	26 E	WM	32	SW NW	36.50				
4 N	26 E	WM	32	SE NW	6.53				
4 N	26 E	WM	32	NE SW	8.30				
4 N	26 E	WM	32	NW SW	39.35				
4 N	26 E	WM	32	SW SW	37.21				
4 N	26 E	WM	32	SE SW	6.40				
	TOTAL 256.4								

11. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-11379 proposes to move the authorized point of diversion approximately 29.5 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	NE NW	7	POTLATCH PATERSON FARM POD: SOUTH 86 DEGREES 22 MINUTES 46 SECONDS WEST, 2829 FEET FROM THE NE CORNER OF SECTION 2

- 12. Notice of the application for transfer was published on April 3, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 13. Temporary Transfer Application T-11379 proposes to temporarily transfer a portion of water right Certificate 79482 from the Potlatch Paterson Farm to the Butter Creek Farm, and an equivalent portion of the acres under Certificate 87111 is proposed to be transferred from the Echo Farm to the Potlatch Paterson Farm. This transfer will transport the water through lands and delivery systems of the Potlatch Corporation (Boardman Tree Farm), Hale Farms,

- 5. A subsequent application for permanent transfer of Certificates 79482 and 87111 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.
- 6. The use of water at the temporary place of use authorized by this transfer shall be in accordance with the terms and conditions of Certificates 79482 and 87111, with the exception that the duty transferred under Certificate 79482 is limited to 4.0 acre-feet per acre at the temporary location.
- 7. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
- 8. The water user shall maintain and operate the existing measurement devices and shall make such improvements as may be required by the Department.
- 9. The use of the remaining portions of the water rights described by Certificates 79482 and 87111 shall continue to be in accordance with the terms and conditions of Certificates 79482 and 87111.

Dated at Salem, Oregon this	18_	_ day of May, 2012.
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Dwight French, Water Right Services Administrator, for

PHILLIP C. WARD, DIRECTOR

MAY 2 4 2012

Mailing Date:

Columbia Improvement District. Madison Farms, Butter Creek Irrigation District and Echo Irrigation District. All parties were notified of the proposed temporary transfer and have indicated that they do not object to the transfer.

- 14. Land in Sections 7 and 8, T3N, R30E, from which Certificate 87111 is proposed to be transferred, are also covered by Permit S-54561 for irrigation. However, this permit will not be exercised on those lands during the term of the temporary transfer.
- 15. Water right Permits S-54675 and S-51017 cover lands in Section 5, T2N, R28 E, that Certificate 79482 is proposed to be transferred to. These permits will not be exercised on the affected lands during the term of the temporary transfer.

#### Temporary Transfer Review Criteria

- 16. Water has been used within the last five years according to the terms and conditions of the rights. There is no evidence available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
- 17. Diversion structures and pumps, pipelines, and sprinkler systems sufficient to use the full amount of water allowed under the existing rights are present.
- 18. The proposed changes would not result in enlargement of the rights, as conditioned to limit the duty being transferred under Certificate 79482 to 4.0 acre-feet per acre.
- 19. 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 point of diversion proposed in application Temporary Transfer Application T-11379 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 points of diversion proposed in Temporary Transfer Application T-11379 are approved.
- 2. The former place of use **shall not** be irrigated as part of these water rights during the 2012 irrigation season.
- 3. The use shall revert to the authorized place of use at the end of the 2012 irrigation season. The authorization to use the temporary points of diversion shall be terminated concurrently.
- 4. The approval of this temporary transfer may be revoked or modified if the Department finds the changes cause injury to any existing water right.