BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER APPROVING AN
T-11048, Klamath County)	EMERGENCY USE DROUGHT
)	TEMPORARY CHANGE IN POINT OF
)	APPROPRIATION

Authority

ORS 536.750 establishes the process in which a water right holder may submit a request to temporarily transfer the use, place of use or point of diversion of water without complying with the notice and waiting requirements under ORS 540.520. OAR Chapter 690, Division 19 implements the statutes and provides the Department's procedures and criteria for evaluating temporary drought transfer applications.

Applicants

FRANK F DIAZ DELYLE D. DIAZ PO BOX 676 MERRILL OR 97633

Findings of Fact

Background

- 1. On March 29, 2010, FRANK DIAZ AND DELYLE DIAZ filed an application to temporarily change the point of appropriation under Certificate 86099 for a period of one year or the term of the Governor's declared drought, whichever is shorter. The Department assigned the application number T-11048.
- 2. The portion of the right to be transferred is as follows:

Certificate: 86099 in the name of LYNN R. POPE AND DELYLE D. DIAZ OR

FRANK F. DIAZ (perfected under Permit G-12584)

Use: SUPPLEMENTAL IRRIGATION OF 68.2 ACRES

Priority Date: JUNE 22, 1993

Rate: 0.85 CUBIC FOOT PER SECOND

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:

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-EIGHTIETH 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.

Period of Use: MARCH 1 THROUGH SEPTEMBER 30
Source: A WELL within the LOST RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	11 E	WM	4	NW NE	650 FEET SOUTH AND 1465 FEET WEST FROM THE NE CORNER OF SECTION 4

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	
40 S	11 E	WM	33	SE SE	22.3	
41 S	11 E	WM	4	NE NE	37.6	
41 S	11 E	WM	4	SE NE	8.3	
				TOTAL	68.2	

3. Temporary Transfer Application T-11048 proposes to move the authorized point of appropriation approximately 400 feet northwest to:

	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
ĺ	41 S	11 E	WM	4	NE NE	260 FEET SOUTH AND 1290 FEET WEST FROM THE NE CORNER OF SECTION 4

- 4. 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.
- 5. Temporary Transfer Application T-11048 proposes to temporarily transfer a water right within the boundaries of Klamath Irrigation District. The district was notified of the proposed temporary transfer and did not provide any comments.

Temporary Transfer Review Criteria

- 6. 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.
- 7. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right is 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 change in point of appropriation proposed in Temporary Transfer Application T-11048 is consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

- 1. This change is temporary. This change shall be effective upon issuance of this order.
- 2. The use shall revert to the authorized point of appropriation at the end of the 2010 irrigation season or the end of the Governor's declared drought, whichever occurs first.
- 3. The quantity of water diverted at the temporary point of appropriation shall not exceed the quantity of water available at the authorized point of appropriation.
- 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. Issuance of this temporary drought transfer order may not protect the person receiving the transfer from liability for improper use of the water under transfer.
- 6. A subsequent application for permanent transfer of Certificate 86099 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 from the temporary point of appropriation authorized by this transfer shall be in accordance with the terms and conditions of Certificate 86099.
- 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. The use of the remaining water right described by Certificate 86099 shall continue to be in accordance with the terms and conditions of Certificate 86099.

Dated at Salem, Oregon this 62	day of April	2010.
William & Ferbra	,	
Phillip C. Ward, Director		

Mailing Date: **APR 0 7 2010**