

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-10542, Clackamas County)	TEMPORARY CHANGES IN PLACE
)	OF USE

Authority

ORS 537.705 and 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

MARJORIE E. JONES and GAYLE CALLIS
PO BOX 1052
MOUNT ANGEL,OR 97362

Agent

PACIFIC HYDRO-GEOLOGY INC.
GREG OR MALIA KUPILLAS
18487 S. VALLEY VISTA RD.
MULINO, OR 97042

Findings of Fact

Background

1. On February 21, 2008, Marjorie E. Jones and Gayle Callis filed an application to temporarily change the place of use under Certificates 74653 and 74654 and Transfer Application T-6920 (as approved by Special Order Volume 51 Page 633; corrected by Special Order Volume 51 Page 1026) for which proper proof to the satisfaction of the Director has been filed. The application requests the changes be approved for a period of five years. The Department assigned the application number T-10542.
2. The entirety of the first right to be transferred is as follows:
Certificate: 74653 in the name of H. L. "CASEY" and MARJORIE E. JONES (perfected under Permit S-49627)
Use: IRRIGATION of 3.5 ACRES
Priority Date: JANUARY 15, 1986
Rate: 0.04 CUBIC FOOT PER SECOND (cfs)
Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre during the irrigation season of each year

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 137-004-0080, 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.

Source: BUTTE CREEK, a tributary to the PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	1 E	WM	8	NE NW	41	640 FEET SOUTH AND 480 FEET WEST FROM THE N1/4 CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 E	WM	8	NW NE	41	3.5

3. Transfer Application T-10542 proposes to change the place of use to a different parcel within:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 E	WM	8	NW NE	41	3.5

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

Certificate: 74654 in the name of H. L. "CASEY" and MARJORIE E. JONES (perfected under Permit S-12393)

Use: IRRIGATION of 3.5 ACRES

Priority Date: SEPTEMBER 29, 1936

Rate: 0.04 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre during the irrigation season of each year

Source: BUTTE CREEK, a tributary to the PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
6 S	1 E	WM	8	NE NW	41

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 E	WM	8	NW NE	41	3.5

5. Transfer Application T-10542 proposes to change the place of use of the right to a different parcel within:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 E	WM	8	NW NE	41	3.5

Note: This transfer application proposes to "flip" Permit S-12393 lands with Permit S-49627 lands in an effort to place the senior water rights on lands north of the buried mainline.

6. The portion of the third right to be transferred is as follows:
Water right subject to transfer: T-6920 in the name of DICKMAN FARMS, INC. (to which proof to the satisfaction of the Director has been established; originally perfected under Permit S-12393)
Use: IRRIGATION of 11.8 ACRES
Priority Date: SEPTEMBER 29, 1936
Rate: 0.15 CUBIC FOOT PER SECOND (cfs)
Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre during the irrigation season of each year
Source: BUTTE CREEK, a tributary to the PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
6 S	1 E	WM	8	NE NW

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 E	WM	8	NW NE	41	5.6
6 S	1 E	WM	8	SW NE	41	6.2

7. Transfer Application T-10542 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 E	WM	8	NW NE	41	7.2
6 S	1 E	WM	8	NE NW	41	4.6

8. The portion of the fourth right to be transferred is as follows:
Water right subject to transfer: T-6920 in the name of DICKMAN FARMS, INC. (to which proof to the satisfaction of the Director has been established; originally perfected under Permit S-49627)
Use: IRRIGATION of 11.8 ACRES
Priority Date: JANUARY 15, 1986
Rate: 0.15 CUBIC FOOT PER SECOND
Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre during the irrigation season of each year
Source: BUTTE CREEK, a tributary to the PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	1 E	WM	8	NE NW	41	640 FEET SOUTH AND 480 FEET WEST FROM THE N1/4 CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 E	WM	8	NW NE	41	7.2
6 S	1 E	WM	8	NE NW	41	4.6

9. Transfer Application T-10542 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	1 E	WM	8	NW NE	41	5.6
6 S	1 E	WM	8	SW NE	41	6.2

Note: This transfer application proposes to “flip” lands in an effort to place the senior water rights on lands north of the buried mainline.

10. Notice of the application for temporary transfer was published on March 4, 2008, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
11. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
13. The proposed change would not result in enlargement of the rights.
14. 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 changes in places of use proposed in Transfer Application T-10542 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The changes in place of use proposed in Transfer Application T-10542 are approved.
2. The former place of use **shall not** be irrigated as part of this water right during the 2008, 2009, 2010, 2011 and 2012 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2012 irrigation season.
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. A subsequent application for permanent transfer of Certificates 74653 and 74654 and Transfer Application T-6920 (as approved by Special Order Volume 51 Page 633; as corrected by Special Order Volume 51 Page 1026) for which proper proof to the satisfaction of the Director has been established, 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 74653 and 74654 and Transfer Application T-6920 (as approved by Special Order Volume 51 Page 633; as corrected by Special Order Volume 51 Page 1026) for which proper proof to the satisfaction of the Director has been established. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
7. When required by the Department, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water used. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
8. The use of the remaining water right described by Certificates 74653 and 74654 and Transfer Application T-6920 (as approved by Special Order Volume 51 Page 633; corrected by Special Order Volume 51 Page 1026) for which proper proof to the satisfaction of the Director has been established, shall continue to be in accordance with the terms and conditions of Certificates 74653 and 74654 and the rights approved by Special Order Volume 51 Page 633 (corrected by Special Order Volume 51 Page 1026).

Dated at Salem, Oregon this 10th day of April, 2008.


Phillip C. Ward, Director

Mailing Date: APR 15 2008