

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-11386, Harney County)	TEMPORARY CHANGES IN PLACE
)	OF USE AND ADDITIONAL POINTS
)	OF APPROPRIATION

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 appropriation 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

ANDY ROOT
524 HWY 20 N
HINES, OR 97738

Findings of Fact

Background

1. On March 28, 2012, ANDY ROOT, filed an application to temporarily change the place of use and add points of appropriation to serve the proposed place of use under Certificates 21216, 26078, 35133 and 35332, for a period of 5 years. The Department assigned the application number T-11386.
2. On April 24, 2012, the agent submitted modified application maps clarifying the authorized and proposed lands for the rights being modified.

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

Certificate: 21216 in the name of TREFFLE J. DUHAIME (perfected under Permit S-19540)

Use: IRRIGATION of 10.4 ACRES

Priority Date: JUNE 5, 1950

Rate: 0.14 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-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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: POISON CREEK SLOUGH within the NINEMILE SLOUGH BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q
23 S	32 E	WM	21	SW SW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	29	SW NE	10.4

4. Certificate 21216 does not describe the location of the point of diversion, however information is available from the water right application map which indicates that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
23 S	32 E	WM	21	SW SW	NORTH 1 DEGREE 8 MINUTES EAST, 102 FEET FROM THE NW CORNER OF SECTION 28

5. Transfer Application T-11386 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	29	NE NE	2.1
23 S	32 E	WM	29	NW NE	4.0
23 S	32 E	WM	29	SW NE	3.9
23 S	32 E	WM	29	SE NE	0.4

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

Certificate: 26078 in the name of T. J./BESSIE DUHAIME (perfected under Permit U-731)

Use: IRRIGATION of 36.3 ACRES

Priority Date: MAY 25, 1955

Rate: 0.13 CUBIC FOOT 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-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.

Source: THREE WELLS within the POISON CREEK SLOUGH BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Name
23 S	32 E	WM	28	NW NW	#1
23 S	32 E	WM	28	SW NW	#2
23 S	32 E	WM	29	SE NE	#3

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	29	SW NE	10.4
23 S	32 E	WM	29	SE NE	8.5
23 S	32 E	WM	29	NE SE	8.5
23 S	32 E	WM	29	NW SE	9.0

7. Transfer Application T-11386 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	29	SW NE	2.2
23 S	32 E	WM	29	SE NE	0.4
23 S	32 E	WM	29	SW SE	4.5
23 S	32 E	WM	29	SE SE	29.2

8. Transfer Application T-11386 also proposes additional points of appropriation, to convey the water to the proposed place of use. The distances from the authorized points of appropriation vary. The authorized Well #1 which is the furthest, is approximately 3/4 mile from Wells #6, #7 and #8: The proposed points of appropriation are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	32 E	WM	29	NW NW	WELL #6: 860 FEET SOUTH AND 1280 FEET EAST FROM THE NW CORNER OF SECTION 29
23 S	32 E	WM	32	NE NE	WELL #8: 50 FEET SOUTH AND 300 FEET WEST FROM THE NE CORNER OF SECTION 32
23 S	32 E	WM	33	NW NW	WELL #7: 250 FEET SOUTH AND 250 FEET EAST FROM THE NW CORNER OF SECTION 29

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

Certificate: 35133 in the name of RYE GRASS RANCHES (perfected under Permit G-2117)

Use: IRRIGATION of 34.6 ACRES

Priority Date: APRIL 18, 1962

Rate: 0.23 CUBIC FOOT 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-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.

Source: WELL #6 within the POISON CREEK SLOUGH BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	32 E	WM	29	NW NW	WELL #6: 860 FEET SOUTH AND 1280 FEET EAST FROM THE NW CORNER OF SECTION 29

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	29	NE NW	7.9
23 S	32 E	WM	29	NW NW	8.2
23 S	32 E	WM	29	SW NW	9.4
23 S	32 E	WM	29	SE NW	9.1

10. Transfer Application T-11386 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	33	NE NW	3.2
23 S	32 E	WM	33	NW NW	31.4

11. Transfer Application T-11386 also proposes additional points of appropriation, to convey the water to the proposed place of use. The distances from the authorized points of appropriation vary. The authorized Well #6 is approximately 3/4 mile from Wells #1, #2, #3, #7 and #8: The proposed points of appropriation are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	32 E	WM	28	SW SW	Well #2: 2000 FEET SOUTH AND 630 FEET EAST FROM THE NW CORNER OF SECTION 28
23 S	32 E	WM	29	SE NE	Well #3: 1690 FEET SOUTH AND 920 FEET WEST FROM THE NW CORNER OF SECTION 28
23 S	32 E	WM	32	NE NE	Well #8: 50 FEET SOUTH AND 300 FEET WEST FROM THE NE CORNER OF SECTION 32
23 S	32 E	WM	33	NW NW	Well #7: 250 FEET SOUTH AND 250 FEET EAST FROM THE NW CORNER, SECTION 33

12. Transfer application T-11386 proposes to diminish the use to supplemental irrigation on the proposed lands during the term of the transfer.

13. The portion of the third fourth to be transferred is as follows:

Certificate: 35332 in the name of T.J. DUHAIME; BESSIE DUHAIME (perfected under Permit G-16)

Use: SUPPLEMENTAL IRRIGATION of 17.6 ACRES

Priority Date: AUGUST 2, 1955

Rate: 0.45 CUBIC FOOT 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-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 FOR SUPPLEMENTAL IRRIGATION acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: DUHAIME WELLS #1, #2, AND #3 within the SILVIES RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	32 E	WM	22	SW SW	NO. 1: 950 FEET SOUTH AND 950 FEET EAST FROM THE NW CORNER OF SECTION 28
23 S	32 E	WM	28	NW NW	NO. 2: 2000 FEET SOUTH AND 630 FEET EAST FROM THE NW CORNER OF SECTION 28
23 S	32 E	WM	28	SW NW	NO. 3: 1690 FEET SOUTH AND 920 FEET WEST FROM THE NW CORNER OF SECTION 28

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	29	NE NE	9.6
23 S	32 E	WM	29	NW NE	8.0

14. Transfer Application T-11386 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	29	NE NE	2.1
23 S	32 E	WM	29	NW NE	4.1
23 S	32 E	WM	29	SW SE	11.4

15. Transfer Application T-11386 also proposes additional points of appropriation, to convey the water to the proposed place of use. The distances from the authorized points of appropriation vary. The authorized Well #1 which is the furthest, is approximately 3/4 mile from Wells #6, #7 and #8: The proposed points of appropriation are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	32 E	WM	29	NW NW	WELL #7: 250 FEET SOuTH AND 250 FEET EAST FROM THE NW CORNER OF SECTION 29
23 S	32 E	WM	32	NE NE	WELL #8: 50 FEET SOUTH AND 300 FEET WEST FROM THE NE CORNER OF SECTION 32
23 S	32 E	WM	33	NW NW	WELL #6: 860 FEET SOUTH AND 1280 FEET EAST FROM THE NW CORNER OF SECTION 29

16. 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.

Temporary Transfer Review Criteria

17. 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.
18. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
19. The proposed changes would not result in enlargement of the rights.
20. 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 additional points of appropriation to serve the temporary place of use proposed in Temporary Transfer Application T-11386 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 additional points of appropriation to serve the temporary place of use proposed in Temporary Transfer Application T-11386 are approved.
2. The portion of Certificate 35133 will be diminished to supplemental irrigation on the proposed lands during the term of the transfer.
3. The former place of use **shall not** be irrigated as part of these water rights during the 2012, 2013, 2014, 2015 and 2016 irrigation seasons.
4. The use shall revert to the authorized place of use at the end of the 2016 irrigation season. The authorization to use the temporary points of appropriation shall be terminated concurrently.
5. The approval of this temporary transfer may be revoked or modified if the Department finds the changes causes injury to any existing water right.
6. A subsequent application for permanent transfer of Certificates 21216, 26078, and 35133 and 35332 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 Certificates 21216, 26078, and 35133 and 35332.
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 rights described by Certificates 21216, 26078, and 35133 and 35332 shall continue to be in accordance with the terms and conditions of Certificates 21216, 26078, and 35133 and 35332.

Dated at Salem, Oregon this 30 day of May, 2012.


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

Mailing Date: JUN 04 2012