

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

In the Matter of Transfer Application) **FINAL ORDER APPROVING**
T-10684, Douglas County) **TEMPORARY CHANGES IN POINT**
) **OF DIVERSION AND 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.

Applicants

HOWARD, MICHAEL AND GARY BROWNSON
7081 SOUTH MYRTLE ROAD
MYRTLE CREEK, OR 97457

Findings of Fact

1. On July 30, 2008, Howard, Michael and Gary Brownsen filed an application to temporarily change the point of diversion and place of use under Certificate 39246 for a period of five years. The Department assigned the application number T-10684.
2. The portion of the right to be transferred is as follows:

Certificate: 39246 in the name of PAUL FIEBER (perfected under Permit S-6647)
Use: IRRIGATION of 4.8 ACRES
Priority Date: DECEMBER 29, 1924
Rate: 0.06 CUBIC FOOT PER SECOND (cfs)
Limit/Duty: ONE-EIGHTIETH cfs per acre during the irrigation season of each year
Source: LOUIS CREEK, tributary to SOUTH MYRTLE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
29 S	4 W	WM	23	NW NW	830 FEET SOUTH AND 1250 FEET EAST FROM THE NW CORNER OF SECTION 23

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.

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
29 S	4 W	WM	23	NE NW	2		4.8

3. Transfer Application T-10684 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
29 S	4 W	WM	21	NW NE	0.2
29 S	4 W	WM	21	SW NE	4.6

4. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Transfer Application T-10684 proposes to move the authorized point of diversion approximately 1.9 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
29 S	4 W	WM	21	SW NE	940 FEET NORTH AND 460 FEET EAST FROM THE CENTER OF SECTION 21

5. Notice of the application for temporary transfer was published on August 5, 2008, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
6. The right was exercised under Temporary Transfer Applications T-9030 and T-9337 during the irrigation seasons of 2002 – 2007 and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
7. Certificate 57906 is appurtenant to some of the land to which Temporary Transfer T-10684 is proposed to be used. The applicant has indicated that the irrigation use under Certificate 57906 shall remain unexercised during the term of this temporary transfer.
8. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
9. The proposed change would not result in enlargement of the right.
10. 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 point of diversion and place of use as proposed in Transfer Application T-10684 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The changes in point of diversion and place of use proposed in Transfer Application T-10684 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. The authorization to use the additional point of diversion shall be terminated concurrently.
4. The water right evidenced by Certificate 57906, appurtenant to the proposed place of use, shall not be used during the term of this temporary transfer.
5. The approval of this temporary transfer may be revoked or modified if the Department finds the change causes injury to any existing water right.
6. A subsequent application for permanent transfer of Certificate 39246 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 Certificate 39246.
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. 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.
10. The use of the remaining water right described by Certificate 39246 shall continue to be in accordance with the terms and conditions of Certificate 39246.

Dated at Salem, Oregon this 30th day of September, 2008.


Phillip C. Ward, Director

Mailing Date: SEP 11 2008