

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-11258, Umatilla County)	TEMPORARY CHANGE IN PLACE OF
)	USE AND POINT 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

PIONEER HI-BRED INTERNATIONAL INC.
ATTN: TERRY DEJONGH
2212 SE 9TH STREET
HERMISTON, OR 97838

Agent

SCHROEDER LAW OFFICES, P.C.
ATTN: THERESE URE
PO BOX 12527
PORTLAND, OR 97212

Findings of Fact

Background

1. On June 2, 2011, PIONEER HI-BRED INTERNATIONAL INC. filed an application to temporarily change the place of use and change the point of appropriation to serve the proposed place of use under Certificate 79889 for a period of 5 years. The Department assigned the application number T-11258.
2. Deficiencies were identified during the cursory review of T-11258. Initial contact was made on July 18, 2011 notifying the agent of the deficiencies found.
3. A letter dated July 25, 2011, from Schroeder law offices, agent for transfer T-11258, was received, addressing exceptions pertaining to OAR 690-380-8000(1)(a).
4. On August 5, 2011, Schroeder law offices, agent for transfer T-11258, requested the application to be modified to exclude a portion of the transfer that did not meet the requirements of OAR 690-380-8000 through 690-380-8004.

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. The portion of the first right to be transferred is as follows:
- Certificate:** 79889 in the name of VERNON AND IVAN COOK, (perfected under Permit G-7183)
- Use:** IRRIGATION of 5.8 ACRES
- Priority Date:** FEBRUARY 25, 1977
- Rate:** 0.07 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 #3 within the UMATILLA RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	28 E	WM	23	SW NE	Well #3: 1350 FEET SOUTH AND 1330 FEET WEST FROM THE NE1/4 CORNER OF SECTION 23

Authorized Place of Use:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Proposed Change	Tax Lot	Land Owner
4 N	28 E	WM	23	NW NE	5.1	POU/POA	202	Pioneer
4 N	28 E	WM	23	SW NE	0.5	POU/POA	205	Hermiston
4 N	28 E	WM	23	SW NE	0.2	POU/POA	200	Hermiston
Total Acres					5.8			

6. Transfer Application T-11258 proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Land Owner
4 N	28 E	WM	23	NW NE	5.6	202	Pioneer
4 N	28 E	WM	23	SW NE	0.2	204	Hermiston
Total Acres					5.8		

7. A change in point of appropriation is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-11258 proposes to move the authorized point of appropriation approximately 1190 feet west from the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	28 E	WM	23	NW NE	NEW WELL: 1280 FEET SOUTH AND 2520 FEET WEST FROM THE NE1/4 CORNER OF SECTION 23

8. Notice of the application for transfer was published on June 7, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

Temporary Transfer Review Criteria

9. 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.
10. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right is present.
11. The proposed changes in place of use and point of appropriation for the lands described in Findings of Fact #6 and #7 would not result in enlargement of the right.
12. 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 the place of use and point of appropriation to serve the proposed place of use proposed in Temporary Transfer Application T-11258 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The temporary changes in the place of use and the point of appropriation to serve the proposed place of use proposed in Temporary Transfer Application T-11258 are approved.
2. The former place of use **shall not** be irrigated as part of this water right during the 2011, 2012, 2013, 2014 and 2015 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2015 irrigation season. The authorization to use the temporary point of appropriation 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.
5. A subsequent application for permanent transfer of Certificate 79889 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 Certificate 79889.
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 use of the remaining water right described by Certificate 79889 shall continue to be in accordance with the terms and conditions of Certificate 79889.

Dated at Salem, Oregon this 12 day of August, 2011.


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

Mailing Date: AUG 15 2011