

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-11256, Umatilla County)	CHANGE IN POINT OF
)	APPROPRIATION AND PLACE OF
)	USE AND TERMINATION OF
)	TEMPORARY TRANSFER T-11258

Authority

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, place of use, or character of use 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
2212 SE 9TH ST
HERMISTON, OR 97838

Agent

DR. PAUL WATTENBURGER
505 E MAIN ST
HERMISTON, OR 97838

Attorney

SCHROEDER LAW OFFICES
THERESE URE
1915 NE CESAR E. CHAVEZ BLVD.
PORTLAND, OR 97212

Findings of Fact

Background

1. On June 2, 2011, PIONEER HI-BRED INTERNATIONAL INC filed an application to change the point of appropriation and to change the place of use under Certificate 79889. The Department assigned the application number T-11256.
2. On September 13, 2011 the applicant's agent submitted an amended application map.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, 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.

3. The portion of the 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 20.5 ACRES
Priority Date: FEBRUARY 25, 1977
Rate: 0.26 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 NO. 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 NO. 3 - 1350 FEET SOUTH AND 1330 FEET WEST FROM THE NE CORNER OF SECTION 23

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change	Tax Lot
4 N	28 E	WM	23	NW NE	14.9	POA	202
4 N	28 E	WM	23	NW NE	5.1	POU/POA	202
4 N	28 E	WM	23	SW NE	0.5	POU/POA	205

4. Transfer Application T-11256 proposes to move the authorized point of appropriation approximately 70 feet North and 1190 feet West from the existing 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 NE CORNER OF SECTION 23

5. Transfer Application T-11256 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
4 N	28 E	WM	23	NW NE	5.6	202

6. Transfer T-11258 was filed on June 2, 2011, proposing a temporary change in place of use and point of appropriation to accommodate the place of use change. The transfer was approved on August 15, 2011 by Special Order Volume 85, Pages 75-78. The temporary transfer expires at the end of the 2015 irrigation season; however the applicant requested that T-11258 be terminated upon approval of T-11256.

7. 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.

8. On September 13, 2011, Department staff met with the agent and hand delivered copy of the Preliminary Determination proposing to approve Transfer Application T-11254. On September 29, 2011, the applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
9. On October 7, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11254 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on October 11, 2011, pursuant to ORS 540.520 and OAR 690-380-4020.
10. On November 10, 2011, Hale Farms, LLC timely submitted a Protest of the Preliminary Determination. No other timely protests were received by the Department.
11. On December 12, 2011, Hale Farms, LLC withdrew its protest of the Preliminary Determination.

Transfer Review Criteria (OAR 690-380-4010)

12. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
13. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11256.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.

Conclusions of Law

The changes in point of appropriation and place of use proposed in Transfer Application T-11256 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. The application is approved pursuant to the terms and conditions below.

Now, therefore, it is ORDERED:

1. The changes in point of appropriation and place of use proposed in Transfer Application T-11256 are approved.
2. Temporary Transfer T-11258 is terminated.
3. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 79889 and any related decree.

4. Transfers T-11254, T-11255 and T-11256 all modify water right certificate 79889. Certificate 79889 will be cancelled upon issuance of the final orders for these transfers. A new certificate will be issued describing those portions of the right not affected by these transfers.
5. The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.
6. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of appropriation.
 - b. The water user shall maintain the meter in good working order.
 - c. The water user shall allow the Watermaster access to the meter; provided however, where the meter is located within a private structure, the Watermaster shall request access upon reasonable notice.
7. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
8. The former place of use of the transferred right shall no longer receive water under the right.
9. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2013**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
10. When satisfactory proof of the completed changes is received, new certificates confirming the right transferred will be issued.

Dated at Salem, Oregon this 5 day January, 2012.



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

Mailing Date: _____