

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-11573, Morrow County)	TEMPORARY CHANGES IN PLACE
)	OF USE AND POINTS OF DIVERSION

Authority

ORS 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	Agent	Agent
HALE FARMS LLC	WILLIAM PORFILY	KIRK B. MAAG
73120 HWY 207	PO BOX 643	STOEL RIVES LLP
ECHO, OR 97826	STANFIELD, OR 97875	900 SW FIFTH AVE., SUITE 2600
creeder@hale-co.com	wporfily@gmail.com	PORTLAND, OR 97204

Findings of Fact

1. On April 16, 2013, HALE FARMS LLC, filed an application to temporarily change the places of use and change the points of diversion to serve the proposed places of use under Certificates 79482 and 87111 for a period of one year. The Department assigned the application number T-11573.

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

Certificate: 79482 in the name of POTLATCH CORP. (perfected under Permit S-36940)
Use: IRRIGATION of 256.4 ACRES
Priority Date: JUNE 29, 1973
Rate: 6.34 CUBIC FEET PER SECOND (cfs)
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 cfs, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: COLUMBIA RIVER a tributary of the PACIFIC OCEAN

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 Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Measured Distances
4 N	25 E	WM	2	NE NW	7	POTLATCH PATERSON FARM POD: SOUTH 86 DEGREES 22 MINUTES 46 SECONDS WEST, 2829 FEET FROM THE NE CORNER OF SECTION 2

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	26 E	WM	29	SW SW	1.70
4 N	26 E	WM	31	NE NE	19.10
4 N	26 E	WM	31	SE NE	16.00
4 N	26 E	WM	31	NE SE	20.20
4 N	26 E	WM	31	SE SE	17.50
4 N	26 E	WM	32	NE NW	8.50
4 N	26 E	WM	32	NW NW	39.11
4 N	26 E	WM	32	SW NW	36.50
4 N	26 E	WM	32	SE NW	6.53
4 N	26 E	WM	32	NE SW	8.30
4 N	26 E	WM	32	NW SW	39.35
4 N	26 E	WM	32	SW SW	37.21
4 N	26 E	WM	32	SE SW	6.40
TOTAL					256.4

3. Temporary Transfer Application T-11573 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	28 E	WM	5	NE SW	32.0
2 N	28 E	WM	5	NW SW	32.0
2 N	28 E	WM	5	SW SW	32.0
2 N	28 E	WM	5	SE SW	32.0
2 N	28 E	WM	5	NE SE	32.1
2 N	28 E	WM	5	NW SE	32.1
2 N	28 E	WM	5	SW SE	32.1
2 N	28 E	WM	5	SE SE	32.1
TOTAL					256.4

4. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-11573 proposes to move the authorized POD to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	NE NW	7	COLUMBIA IMPROVEMENT DISTRICT POD: 150 FEET SOUTH AND 2990 FEET WEST FROM THE NE CORNER OF SECTION 2

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

Certificate: 87111 in the name of HALE FARMS, LLC (perfected under Permit S-37121)
Use: IRRIGATION of 256.4 ACRES
Priority Date: OCTOBER 3, 1973 plus one minute and DECEMBER 11, 1973 plus one minute
Rate: 2.77 CUBIC FEET PER SECOND (cfs), being 2.18 cfs priority October 3, 1973 plus one minute and 0.59 cfs priority December 11, 1973 plus one minute
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-SIXTIETH of one cfs, 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.
Period of Use: March 1 through October 31
Source: COLUMBIA RIVER a tributary of the PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	30 E	WM	8	SW NW	HUTTERITE POD: 2910 FEET NORTH AND 120 FEET EAST FROM THE SW CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	30 E	WM	7	NE SE	29.0
3 N	30 E	WM	7	NW SE	28.5
3 N	30 E	WM	7	SW SE	28.9
3 N	30 E	WM	7	SE SE	31.3
3 N	30 E	WM	8	SE NW	20.5
3 N	30 E	WM	8	NE SW	31.0
3 N	30 E	WM	8	NW SW	28.1
3 N	30 E	WM	8	SW SW	27.5
3 N	30 E	WM	8	SE SW	31.6
TOTAL					256.4

6. Temporary Transfer Application T-11573 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	26 E	WM	29	SW SW	1.70
4 N	26 E	WM	31	NE NE	19.10
4 N	26 E	WM	31	SE NE	16.00
4 N	26 E	WM	31	NE SE	20.20
4 N	26 E	WM	31	SE SE	17.50
4 N	26 E	WM	32	NE NW	8.50
4 N	26 E	WM	32	NW NW	39.11
4 N	26 E	WM	32	SW NW	36.50
4 N	26 E	WM	32	SE NW	6.53

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	26 E	WM	32	NE SW	8.30
4 N	26 E	WM	32	NW SW	39.35
4 N	26 E	WM	32	SW SW	37.21
4 N	26 E	WM	32	SE SW	6.40
TOTAL					256.4

7. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-11573 proposes to move the authorized point of diversion approximately 29.5 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	NE NW	7	<u>POTLATCH PATERSON FARM POD:</u> SOUTH 86 DEGREES 22 MINUTES 46 SECONDS WEST, 2829 FEET FROM THE NE CORNER OF SECTION 2

8. Notice of the application for transfer was published on April 23, 2013, pursuant to OAR 690-380-4000. Due to a typographical omission, Temporary Transfer T-11573 was re-noticed pursuant to OAR 690-380-4000 on April 30, 2013. No comments were filed in response to either of the notices.
9. Water use Permits S-54675 and S-51017 are appurtenant to a portion of the lands identified in Finding of Fact #3, the proposed place of use for a portion of Certificate 79482. These water use permits, due to rate restriction and scheduled crop rotations, will not be used during the term of this temporary transfer.
10. Portions of water use Permit S-54561 are appurtenant to portions of the proposed place of use described in Finding of Fact #6. Water use Permit S-54561 will not be exercised on these lands for the term of this temporary transfer.

Temporary Transfer Review Criteria

11. 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.
12. Diversion structures and pumps, pipelines, and sprinkler systems sufficient to use the full amount of water allowed under the existing rights are present.
13. The proposed changes would not result in enlargement of the rights.
14. 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 point of diversion proposed in Temporary Transfer Application T-11573 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 points of diversion proposed in Temporary Transfer Application T-11573 are approved.
2. The former place of use **shall not** be irrigated as part of these water rights during the 2013 irrigation season.
3. The use shall revert to the authorized place of use at the end of the 2013 irrigation season. The authorization to use the temporary points of diversion 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 Certificates 79482 and 87111 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 79482 and 87111.
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 water user shall maintain and operate the existing measurement devices and shall make such improvements as may be required by the Department.
9. The use of the remaining portions of the water rights described by Certificates 79482 and 87111 shall continue to be in accordance with the terms and conditions of Certificates 79482 and 87111.

Dated at Salem, Oregon this 10 day of June, 2013.


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

Mailing Date: JUNE 13 2013