

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

In the Matter of Transfer Application)
T-12821, Umatilla County)
)
) FINAL ORDER APPROVING A
) TEMPORARY CHANGE IN
) 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 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

ST. HILAIRE BROTHERS
HERMISTON FARM, LLC
84186 HWY 37
HERMISTON, OR 97838

Agent

SCHWABE WILLIAMSON & WYATT
ATTN. SHONEE LANGFORD
530 CENTER ST. NE, STE. 730
SALEM, OR. 97301

Findings of Fact

1. On January 11, 2018, St. Hilaire Brothers, Hermiston Farm LLC, filed an application to temporarily change the place of use under Certificate 80295 for a period of five years. The Department assigned the application number T-12821.
2. The portion of the right to be transferred is as follows:

Certificate: 80295 in the name of MERLE GEHRKE (perfected under Permit G-7929)
Use: IRRIGATION of 408.8 ACRES
Priority Date: FEBRUARY 15, 1978
Rate: 5.11 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-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: FOUR WELLS in the STAGE GULCH BASIN

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.

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Description/Measured Distances
4 N	30 E	WM	33	SE SW	WELL 1 - 1030 FEET NORTH AND 2420 FEET EAST FROM THE SW CORNER OF SECTION 33
4 N	30 E	WM	32	SW SE	WELL 2 - 980 FEET NORTH AND 1640 FEET WEST FROM THE SW CORNER OF SECTION 33
4 N	30 E	WM	29	NE SE	WELL 3- 2170 FEET NORTH AND 50 FEET WEST FROM THE SE CORNER OF SECTION 29
4 N	30 E	WM	28	SE NE	WELL 4 - 930 FEET NORTH AND 240 FEET WEST FROM THE E1/4 CORNER OF SECTION 28

Authorized Place of Use

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	30 E	WM	4	NE NE	6.3
3 N	30 E	WM	4	NW NE	1.3
3 N	30 E	WM	4	SW NE	1.7
3 N	30 E	WM	4	SE NE	1.6
3 N	30 E	WM	4	NE NW	2.3
3 N	30 E	WM	4	NW NW	0.4
3 N	30 E	WM	4	SW NW	0.2
3 N	30 E	WM	4	SE NW	0.5
3 N	30 E	WM	5	NE NE	3.2
3 N	30 E	WM	5	NW NE	1.4
3 N	30 E	WM	5	SW NE	1.3
3 N	30 E	WM	5	SE NE	1.2
4 N	30 E	WM	27	NE NW	1.4
4 N	30 E	WM	27	NW NW	1.5
4 N	30 E	WM	27	SW NW	1.1
4 N	30 E	WM	27	SE NW	1.1
4 N	30 E	WM	27	NE SW	1.3
4 N	30 E	WM	27	NW SW	2.0
4 N	30 E	WM	27	SW SW	10.7
4 N	30 E	WM	27	SE SW	1.5
4 N	30 E	WM	28	NE NE	0.7
4 N	30 E	WM	28	NW NE	0.2
4 N	30 E	WM	28	SW NE	16.4
4 N	30 E	WM	28	SE NE	1.9
4 N	30 E	WM	28	NE NW	2.8
4 N	30 E	WM	28	NW NW	1.6
4 N	30 E	WM	28	SW NW	3.3
4 N	30 E	WM	28	SE NW	20.3
4 N	30 E	WM	28	NE SW	0.7
4 N	30 E	WM	28	NW SW	3.9
4 N	30 E	WM	28	SW SW	2.0
4 N	30 E	WM	28	SE SW	1.0
4 N	30 E	WM	28	NE SE	0.2
4 N	30 E	WM	28	NW SE	2.2
4 N	30 E	WM	28	SW SE	3.0
4 N	30 E	WM	28	SE SE	9.4
4 N	30 E	WM	29	NE NE	1.7
4 N	30 E	WM	29	NW NE	2.3

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	30 E	WM	29	SW NE	1.4
4 N	30 E	WM	29	SE NE	1.5
4 N	30 E	WM	29	NE SE	11.5
4 N	30 E	WM	29	NW SE	1.4
4 N	30 E	WM	29	SW SE	0.9
4 N	30 E	WM	32	NE NE	1.5
4 N	30 E	WM	32	NW NE	1.6
4 N	30 E	WM	32	SW NE	0.4
4 N	30 E	WM	32	SE NE	1.0
4 N	30 E	WM	32	NE SE	6.4
4 N	30 E	WM	32	NW SE	19.0
4 N	30 E	WM	32	SW SE	10.5
4 N	30 E	WM	32	SE SE	10.8
4 N	30 E	WM	33	NE NE	31.4
4 N	30 E	WM	33	NW NE	7.7
4 N	30 E	WM	33	SE NE	16.7
4 N	30 E	WM	33	NE NW	19.7
4 N	30 E	WM	33	NW NW	0.2
4 N	30 E	WM	33	SW NW	1.3
4 N	30 E	WM	33	SE NW	7.1
4 N	30 E	WM	33	NE SW	5.4
4 N	30 E	WM	33	SE SW	15.2
4 N	30 E	WM	33	NE SE	16.1
4 N	30 E	WM	33	NW SE	14.4
4 N	30 E	WM	33	SW SE	8.3
4 N	30 E	WM	33	SE SE	21.2
4 N	30 E	WM	34	NE NW	7.7
4 N	30 E	WM	34	NW NW	30.6
4 N	30 E	WM	34	SW NW	7.7
4 N	30 E	WM	34	SE NW	1.0
4 N	30 E	WM	34	NE SW	1.0
4 N	30 E	WM	34	NW SW	11.1
4 N	30 E	WM	34	SW SW	1.5
Total:					408.8

3. Transfer Application T-12821 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	30 E	WM	29	SW SW	9.5
4 N	30 E	WM	29	SE SW	9.2
4 N	30 E	WM	30	SW SE	0.2
4 N	30 E	WM	30	SE SE	0.2
4 N	30 E	WM	31	NE NE	31.1
4 N	30 E	WM	31	NW NE	31.5
4 N	30 E	WM	31	SW NE	23.3
4 N	30 E	WM	31	SE NE	23.5
4 N	30 E	WM	31	NE SE	22.8
4 N	30 E	WM	31	NW SE	16.5
4 N	30 E	WM	31	SW SE	23.2

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	30 E	WM	31	SE SE	32.1
4 N	30 E	WM	32	NE NW	36.1
4 N	30 E	WM	32	NW NW	36.1
4 N	30 E	WM	32	SW NW	18.6
4 N	30 E	WM	32	SE NW	22.6
4 N	30 E	WM	32	NE SW	36.5
4 N	30 E	WM	32	NW SW	28.1
4 N	30 E	WM	32	SW SW	2.8
4 N	30 E	WM	32	SE SW	4.9
Total:					408.8

4. Notice of the application for temporary transfer was published on January 23, 2018, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
5. The right was exercised under Temporary Transfer Application T-11616 during the irrigation seasons of 2013, 2014, 2015, 2016, and 2017, irrigation seasons and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
6. Water use Permit S-54385 is appurtenant to some of the land to which Temporary Transfer T-12821 is proposed to be used. The primary irrigation use under water use Permit S-54385 shall remain unexercised during the term of this temporary transfer.
7. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
8. The proposed change would not result in enlargement of the water right, if conditioned to eliminate the use of Permit S-54385 as a primary irrigation right on the same lands.
9. 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 change in place of use proposed in Transfer Application T-12821 is consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The change in place of use as proposed in Transfer Application T-12821 is approved.
2. The authorized place of use for primary irrigation for those lands described in Finding of Fact #3 under water use Permit S-54385 **shall not** be exercised during the term of this temporary transfer.

3. The former place of use **shall not** be irrigated as part of this water right during the 2018, 2019, 2020, 2021, and 2022, irrigation seasons.
4. The use shall revert to the authorized place of use at the end of the 2022, irrigation season.
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 80295 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 80295.
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 water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
10. The use of the remaining water right described by Certificate 80295 shall continue to be in accordance with the terms and conditions of Certificate 80295.

Dated at Salem, Oregon this 22 day of March, 2018.



Dwight French, Water Right Services Administrator for
Thomas M. Byler, Director

Mailing Date: MAR 26 2018