

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

In the Matter of Transfer Application        )  
T-11825, Polk County                         )  
  )  
  )  
  )

FINAL ORDER APPROVING  
TEMPORARY CHANGES IN PLACE  
OF USE, POINTS OF DIVERSION,  
AND AN ADDITIONAL POINT 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**

OLSEN AGRICULTURE ENTERPRISES  
8930 SUVER RD  
MONMOUTH, OR 97361

**Findings of Fact**

1. On June 4, 2014, OLSEN AGRICULTURE ENTERPRISES filed an application to temporarily change the place of use, point of diversion and add an additional point of diversion to serve the proposed place of use under Certificate 42535 and 89189 for a period of FIVE years. The Department assigned the application number T-11825.
2. Notice of the application for transfer was published on June 10, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The portion of the first right to be temporarily transferred is as follows:

**Certificate:** 42535 in the name of PHILLIP D. AND DELIA M. SPERLING  
(perfected under Permit S-33441)

**Use:** IRRIGATION of 102.2 ACRES

**Priority Date:** APRIL 5, 1968

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.

**Rate:** 1.28 CUBIC FEET PER SECOND, BEING 0.85 CFS FROM UNNAMED STREAM AND 0.43 CFS FROM LUCKIAMUTE RIVER WITH ANY DEFICIENCY IN THE AVAILABLE SUPPLY FROM THE UNNAMED STREAM TO BE MADE UP BY APROPRIATION FROM LUCKIAMUTE RIVER PROVIDED THAT THE TOTAL QUANTITY DIVERTED FROM BOTH SOURCES SHALL NOT EXCEED 1.28 CFS.

**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** UNNAMED STREAM and LUCKIAMUTE RIVER, tributaries of WILLAMETTE RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Measured Distances
9 S	4 W	WM	17	NE SW			UNNAMED STREAM: 1000 FEET SOUTH AND 1420 FEET EAST FROM THE NE CORNER OF STEEPROW DLC 61
9 S	4 W	WM	17	SW SE	6		UNNAMED STREAM: 1980 FEET SOUTH AND 1670 FEET EAST FROM THE NE CORNER OF STEEPROW DLC 61
9 S	4 W	WM	18	SE SW	2		LUCKIAMUTE RIVER: 2130 FEET SOUTH AND 4280 FEET WEST FROM THE NE CORNER OF STEEPROW DLC 61
9 S	4 W	WM	20	SW NW		63	LUCKIAMUTE RIVER: 4500 FEET SOUTH FROM THE NE CORNER OF STEEPROW DLC 61

**Authorized Place of Use:**

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
9 S	4 W	WM	17	SW NE		43	28.3
9 S	4 W	WM	17	SE NE		43	3.0
9 S	4 W	WM	17	SE NW	1		1.6
9 S	4 W	WM	17	SE NW		43	2.3
9 S	4 W	WM	17	NE SW			4.8
9 S	4 W	WM	17	SE SW	5		0.7
9 S	4 W	WM	17	NE SE			14.1
9 S	4 W	WM	17	NW SE			34.2
9 S	4 W	WM	17	SW SE	6		9.4
9 S	4 W	WM	17	SE SE	7		3.8

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
Total:							102.2

- In Certificate 42535, the narrative states there are 153.7 acres, however the sum of the described acres is 153.9. This transfer is based on 153.9 acres.
- Temporary Transfer Application T-11825 proposes to temporarily change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	
9 S	4 W	WM	29	SE SW	69	1.5	
9 S	4 W	WM	29	SW SE	69	25.9	
9 S	4 W	WM	29	SE SE	69	6.8	
9 S	4 W	WM	32	NE NE	69	11.0	
9 S	4 W	WM	32	NW NE	69	40.0	
9 S	4 W	WM	32	SW NE	69	9.5	
9 S	4 W	WM	32	SE NE	69	1.5	
9 S	4 W	WM	32	NE NW	69	5.2	
9 S	4 W	WM	32	SE NW	69	0.8	
Total:							102.2

- A change in points of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-11825 proposes two points of diversion, described below with the approximate distances downstream from the existing points of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from authorized pod
9 S	4 W	WM	29	NE SW	1000 FEET NORTH AND 100 FEET WEST FROM THE SE CORNER OF DLC 46	1 – 2.0 miles 2 – 1.8 miles 3 – 2.0 miles 4 – 1.3 miles
9 S	4 W	WM	30	NE SE	1640 FEET NORTH AND 125 FEET WEST FROM THE SE CORNER OF SECTION 30	1 – 2.1 miles 2 – 1.9 miles 3 – 1.9 miles 4 – 1.3 miles

- The second right to be temporarily transferred is as follows:

**Certificate:** 89189 in the name of PHILIP AND DELIA SPERLING (perfected under Permit S-37832)  
**Use:** IRRIGATION of 126.0 ACRES  
**Priority Date:** AUGUST 20, 1973  
**Rate:** 1.58 CUBIC FEET 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** LUCKIAMUTE RIVER, tributary of WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
9 S	4 W	WM	20	SW NW	63	2530 FEET SOUTH AND 30 FEET EAST FROM THE NW CORNER OF VANDERPOOL DLC 63

**Authorized Place of Use:**

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
9 S	4 W	WM	17	SW NW	2		0.7
9 S	4 W	WM	17	SE NW	1		8.0
9 S	4 W	WM	17	NE SW			24.0
9 S	4 W	WM	17	NW SW	3		7.8
9 S	4 W	WM	17	SW SW	4		1.2
9 S	4 W	WM	17	SW SW		63	7.0
9 S	4 W	WM	17	SE SW	5		7.1
9 S	4 W	WM	17	SE SW		63	25.0
9 S	4 W	WM	20	NE NW		63	30.4
9 S	4 W	WM	20	NW NW		63	7.5
9 S	4 W	WM	20	SE NW		63	7.3
Total:							126.0

8. Temporary Transfer Application T-11825 proposes to temporarily change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
9 S	4 W	WM	31	NE SE		59	10.9
9 S	4 W	WM	31	NE SE		58	6.0
9 S	4 W	WM	31	SE SE		58	1.6
9 S	4 W	WM	31	SE SE		59	4.1
9 S	4 W	WM	32	SW NE		69	30.5
9 S	4 W	WM	32	SE NE		69	10.5
9 S	4 W	WM	32	SE NW		69	7.9
9 S	4 W	WM	32	NE SW		69	6.1
9 S	4 W	WM	32	NE SW		59	3.0
9 S	4 W	WM	32	NW SW		59	11.3
9 S	4 W	WM	32	SW SW		59	6.5
9 S	4 W	WM	32	NE SE		69	6.5
9 S	4 W	WM	32	NW SE		69	21.1
Total:							126.0

9. A change in point of diversion and an additional point of diversion are necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-11825 proposes to move the authorized point of diversion approximately 1.4 miles and add a point of diversion approximately 1.4 miles, both downstream, to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	4 W	WM	29	NE SW	1000 FEET NORTH AND 100 FEET WEST FROM THE SE CORNER OF DLC 46
9 S	4 W	WM	30	NE SE	1640 FEET NORTH AND 125 FEET WEST FROM THE SE CORNER OF SECTION 30

10. Water right Permits S-54125 and S-54128, with an approved period of use from April 1 through June 30 of each year, exist on the proposed place of use for Temporary Transfer Application T-11825.

***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. A pump, pipeline, and sprinkler system 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, points of diversion and additional point of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-11825 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, point of diversion and additional point of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-11825 are approved.
2. The former place of use **shall not** be irrigated as part of these water rights during the 2014, 2015, 2016, 2017, and 2018 irrigation seasons.

3. On the lands covered by Water Right Permits S-54125 and S-54128, this Temporary Transfer Application T-11825 shall only be exercised when water under Water Right Permits S-54125 and S-54128 is unavailable.
4. The use shall revert to the authorized place of use at the end of the 2018 irrigation season. The authorization to use the additional point of diversion shall be terminated concurrently.
5. The approval of this temporary transfer may be revoked or modified if the Department finds the changes cause injury to any existing water right.
6. A subsequent application for permanent transfer of Certificates 42535 and 89189 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 Certificates 42535 and 89189.
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 use of the remaining water right described by Certificate 42535 shall continue to be in accordance with the terms and conditions of Certificate 42535.

Dated at Salem, Oregon this 10 day of July, 2014.

  
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Dwight French  
Water Right Services Administrator, for  
Director  
Oregon Water Resources Department

Mailing Date: JUL 15 2014