

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING AN
T-11640, Baker County)	EMERGENCY USE DROUGHT
)	TEMPORARY CHANGE IN PLACE OF
)	USE AND POINT OF DIVERSION

Authority

ORS 536.750 establishes the process in which a water right holder may submit a request to temporarily transfer the use, place of use or point of diversion of water in the event of a declaration of drought, without complying with the notice and waiting requirements under ORS 540.520. OAR Chapter 690, Division 019 implements the statutes and provides the Department's procedures and criteria for evaluating drought transfer applications.

Applicant

TOM AND FAWN KERNS
13974 LAUNCHPAD LANE
HAINES, OR 97833

Findings of Fact

1. On July 12, 2013, TOM AND FAWN KERNS filed an application to temporarily change the place of use and the point of diversion under Certificates 45595 and 57606 for the remainder of the 2013 irrigation season or the term of the Governor's declared drought, whichever is shorter. The Department assigned the application number T-11640.
2. Notice of the application for transfer was published on July 16, 2013, pursuant to OAR 690-019-0055. No comments were filed in response to the notice.
3. The portion of the first right to be temporarily transferred is as follows:

Certificate: 45595 in the name of ANDY DELONG (confirmed by Powder River Decree)
Use: IRRIGATION OF 20.0 ACRES
Priority Date: 1868
Rate: 1/40 OF ONE CUBIC FOOT PER SECOND (CFS) PER ACRE (0.50 CFS)
Source: ROCK CREEK, tributary to the POWDER RIVER

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 Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	38 E	WM	34	NE SE	20.00

4. Certificate 45595 does not describe the location of the authorized point of diversion, Brown-Delong Ditch, but the applicant has submitted the ditch location as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	34	NW SW	1790 FEET NORTH AND 230 FEET EAST FROM THE SW CORNER OF SECTION 34

5. Temporary Drought Transfer Application T-11640 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	38 E	WM	35	SW SW	20.00

6. Temporary Drought Transfer Application T-11640 proposes to move the authorized point of diversion approximately 400 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	33	NE SE	McCULLOUGH DITCH – 1670 FEET NORTH AND 200 FEET WEST FROM THE SE CORNER OF SECTION 33

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

Certificate: 57606 in the name of JAMES E KERNS (confirmed by Powder River Decree)
Use: IRRIGATION OF 20.0 ACRES
Priority Date: 1879
Rate: 0.025 CUBIC FOOT PER SECOND (CFS) PER ACRE (0.50 CFS)
Source: ROCK CREEK, tributary to the POWDER RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	33	NW SE	1580 FEET NORTH AND 1430 FEET WEST FROM THE SE CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	38 E	WM	35	SW SW	20.00

8. Temporary Drought Transfer Application T-11640 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	38 E	WM	34	NE SE	20.00

9. Temporary Drought Transfer Application T-11640 proposes to move the authorized point of diversion approximately 1600 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	33	NW SE	BROWN-DELONG DITCH - 1790 FEET NORTH AND 230 FEET EAST FROM THE SW CORNER OF SECTION 34

Temporary Transfer Review Criteria

10. 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.
11. Diversion structures and ditches sufficient to use the full amount of water allowed under the existing rights are present.
12. The Governor issued an executive order on June 23, 2013, declaring a state of drought emergency in Baker County due to drought and extreme weather conditions, which is still in effect and the water right proposed for transfer is on lands included in the area covered by the drought order.
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 OAR 690-019-055(3) if the Department later finds that the transfer is causing injury to any existing water right.

Conclusions of Law

The temporary change in places of use and points of diversion proposed in Temporary Drought Transfer Application T-11640 are consistent with the requirements of ORS 536.750 and OAR 690-019-0055.

Now, therefore, it is ORDERED:

1. The temporary changes in place of use and points of diversion proposed in Temporary Drought Transfer Application T-11460 are approved.
2. The former places of use **shall not** be irrigated as part of these water rights during the remainder of the 2013 irrigation season or until the end of the Governor’s declared drought, whichever occurs first.
3. The approval of this temporary drought transfer may be revoked or modified if the Department finds the changes cause injury to any existing water right.
4. The use of water at the temporary places of use authorized by this transfer shall be in accordance with the terms and conditions of Certificates 45595 and 57606.

5. The proposed places of use shall revert to the authorized places of use at the end of the 2013 irrigation season or the end of the Governor's declared drought, whichever occurs first.

Dated at Salem, Oregon this 17 day of July, 2013.


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

Mailing Date: JUL 19 2013