

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

In the Matter of Transfer Application )  
T-10100, Harney County )  
 ) FINAL ORDER APPROVING CHANGE  
 ) IN POINT OF APPROPRIATION AND  
 ) CHARACTER 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 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**

Burns Paiute Tribe  
100 Pasigo Street  
Burns, OR 97720

**Agent**

Paul Young  
P.O. Box 1239  
Warm Springs, OR 97761

**Findings of Fact**

**Background**

1. On February 21, 2006, Burns Paiute Tribe filed a transfer application to change the point of appropriation and character of use under Certificates 20244, 20245, and Silvie's decree number 14015. The Department assigned the application number T-10100.
2. On September 4, 2007, Bill Reynolds submitted revised maps and further clarification of the proposed changes.

3. The entirety of the first right to be transferred is as follows:

**Certificate:** 20244 in the name of U. S. Department of Interior, Office of Indian Affairs  
(perfected under Permit U-223)  
**Use:** 25.7 acres  
**Priority Date:** October 20, 1947  
**Quantity:** 0.32 cubic foot per second (cfs)  
**Rate/Duty:** 1/80 cfs per acre, not to exceed 3.0 acre-feet per acre during the irrigation season of each year  
**Source:** A well

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 Point of Appropriation:**

Township		Range		Meridian	Sec	¼ ¼	Lot	Survey Coordinates
23	S	30	E	W.M.	1	NE NE	1	Well #2: 900 feet South and 320 feet West from the NE corner of Section 1

**Authorized Place of Use**

Township		Range		Meridian	Sec	¼ ¼	Lot	Acres
23	S	30	E	W.M.	1	NE NE	1	6.2
23	S	30	E	W.M.	1	SE NE		19.5

- The northeast corner of Section 1 as shown on the Department’s 1951 final proof survey of permits U-126 and U-223 is approximately 350 feet south of the corner as established under the official United States public land survey.
- As a result of the use of a different location for the section corner, Certificate 20244 describes 4.5 more acres than are present when using the official United States public land survey. The authorized place of use described consistent with the official United States public land survey is:

Township		Range		Meridian	Sec	¼ ¼	Lot	Acres
23	S	30	E	W.M.	1	NE NE	1	0.7
23	S	30	E	W.M.	1	SE NE		20.5

- The authorized point of diversion described consistent with the official United States public land survey is at:

Township		Range		Meridian	Sec	¼ ¼	Lot	Survey Coordinates
23	S	30	E	W.M.	1	NE NE	1	Well #2: 1250 feet South and 320 feet West from the NE corner of Section 1

- The rate of appropriation necessary to irrigate 21.2 acres at 1/80<sup>th</sup> cubic foot per second per acre is a total of 0.26 cubic foot per second.
- Application T-10100 proposes to move the authorized point of appropriation approximately 0.33 mile from the existing point of appropriation in a southerly direction, within the Harney basin to:

Township		Range		Meridian	Sec	¼ ¼	Lot	Survey Coordinates
23	S	30	E	W.M.	1	NE SE	1	Well #3: 22 feet South and 11 feet West from the E¼ corner of Section 1

- The portion of the second right to be transferred is as follows:

**Decree Number:** 14015 in the name of Brown, N. & Sons as tabulated in the inchoate adjudication for the Silvies River, recorded in Volume 9, Page 176.

**Use:** Irrigation of 21.2 acres  
**Priority Date:** 1906  
**Quantity:** 0.26 CFS  
**Rate/Duty:** 1/80 per acre  
**Source:** Silvies River  
**Authorized Point of Diversion:** Burns Flour Mill Ditch

**Authorized Place of Use:**

Township	Range	Meridian	Sec	¼ ¼	Lot	Acres
23	S	30	E	W.M.	1	NE NE 0.7
23	S	30	E	W.M.	1	SE NE 20.5

10. The location of the Burns Flour Mill Ditch is as follows:

Township	Range	Meridian	Sec	¼ ¼	Ditch
22	S	30	E	W.M.	26 SE NE Burns Flour Mill Ditch

11. Application T-10100 proposes to diminish the character of use of the right described above from Primary Irrigation to Supplemental Irrigation.

12. The third right to be transferred is as follows:

**Certificate:** 20245 in the name of U. S. Department of Interior, Office of Indian Affairs (perfected under Permit U-126)

**Use:** Irrigation of 34.0 acres and domestic use

**Priority Date:** September 23, 1940

**Quantity:** 0.71 CFS, being 0.43 CFS for irrigation and 0.28 CFS for domestic

**Rate/Duty:** 1/80 cfs per acre, not to exceed 2.0 acre-feet per acre during the irrigation season of each year

**Source:** A well

**Authorized Point of Appropriation:**

Township	Range	Meridian	Sec	¼ ¼	Lot	Survey Coordinates
23	S	30	E	W.M.	1	NW NE 2 Well #1: 560 feet South and 1950 feet West from the NE corner of Section 1

**Authorized Place of Use (including domestic use):**

Township	Range	Meridian	Sec	¼ ¼	Lot	Acres
23	S	30	E	W.M.	1	NE NE 5 10.5
23	S	30	E	W.M.	1	NE NE 1 14.3
23	S	30	E	W.M.	1	NW NE 2 9.2

13. As a result of the use of a different location for the section corner, the description of the water right in Certificate 20245 is different from the description using the United States public land survey. The authorized place of use described consistent with the official United States public land survey is:

Township		Range		Meridian	Sec	¼ ¼	Lot	Acres
23	S	30	E	W.M.	1	NE NE	5	3.3
23	S	30	E	W.M.	1	NE NE	1	21.5
23	S	30	E	W.M.	1	NW NE	2	9.2

14. The authorized point of diversion described consistent with the official United States public land survey is at:

Township		Range		Meridian	Sec	¼ ¼	Lot	Survey Coordinates
23	S	30	E	W.M.	1	NE NE	1	Well #2: 1250 feet South and 320 feet West from the NE corner of Section 1

15. Application T-10100 proposes to change the type of use of the right to Quasi-Municipal located at:

Township		Range		Meridian	Sec	¼ ¼	Lot
23	S	30	E	W.M.	1	NE NE	5
23	S	30	E	W.M.	1	NE NE	1
23	S	30	E	W.M.	1	NW NE	2

16. Notice of the application for transfer was published on March 14, 2006, pursuant to ORS 540.520 and OAR 690-380-4000.
17. On September 19, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10100 to the applicant. 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.
18. On January 31, 2008, the Department issued a Preliminary Determination proposing to approve Transfer T-10100 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 February 5, 2008, and in the Burns Times Herald newspaper on April 16, 23 and 30, 2008, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

***Transfer Review Criteria (OAR 690-380-4010)***

19. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
20. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights is present.
21. The proposed change would not result in enlargement of the rights.

22. The proposed change would not result in injury to other water rights.

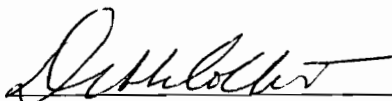
**Conclusions of Law**

The changes in point of appropriation and character of use proposed in application T-10100 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580, and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The changes in point of appropriation and character of use proposed in application T-10100 are approved.
2. Water right certificates 20244 and 20245 are cancelled. The decree number 14105 in the name of Brown, N. & Sons as tabulated in the inchoate adjudication for the Silvie's River, recorded in Volume 9, Page 176, is modified.
3. The right to use of the water is restricted to beneficial use at the place of use as re-described, and is subject to all other conditions and limitations contained in Certificates 20244, 20245 and decree number 14015.
4. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
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. When required by the Department, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
7. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2009**. A Claim of Beneficial Use prepared by a Certified Water Rights 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.
8. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 3<sup>rd</sup> day of June, 2008.

  
Phillip C. Ward, Director

Mailing date: JUN 20 2008