

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

In the Matter of Transfer Application) FINAL ORDER APPROVING CHANGE IN
T-8446, Baker County) PLACE OF USE, POINTS OF DIVERSION,
) PARTIAL CANCELLATIONS AND
) DIMINUTION OF A WATER RIGHT

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

Baker Valley Irrigation District
3895 10th St.
Baker City, OR 97814

Findings of Fact

Background

1. On February 22, 2000, Baker Valley Irrigation District (BVID) filed an application to transfer the place of use and point of diversion under Certificates 73405, 73406, 73587, 73599, 73610, 73999. The Department assigned the application number T-8446.
2. The portion of the first right to be transferred is as follows:

Certificate: 73405 in the name of BAKER VALLEY IRRIGATION DISTRICT (confirmed by Powder River, Consolidated decree)
Use: PRIMARY IRRIGATION
Priority Dates: 1865, 1888, 1893, 1903, 1908
Rate: 3.72 CUBIC FEET PER SECOND (cfs)
Limit/Duty: ONE-FORTIETH of one cfs per acre, unless otherwise stated in each tract, during the irrigation season of each year

This is a final order in other than 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 either 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.

Acres: 149.1

Source: POWDER RIVER, tributary to the Snake River

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
9 S	40 E	WM	21	NW SW	POINT 11 (SETTLERS SLOUGH): 2160 FEET NORTH AND 30 FEET EAST FROM THE SW CORNER OF SECTION 21
9 S	40 E	WM	8	NE SE	POINT 14 (SATTEBURG EAST): 1560 FEET NORTH AND 240 FEET WEST FROM THE SE CORNER OF SECTION 8
9 S	40 E	WM	9	SW NW	POINT 17 (CORRAL DITCH): 50 FEET NORTH AND 2720 FEET EAST FROM THE CENTER OF SECTION 8
8 S	40 E	WM	33	NW SW	POINT 26 (POWERS EAST 2): 2640 FEET NORTH AND 850 FEET EAST FROM THE SW CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Priority	Acres	POD #	Tract
8 S	40 E	WM	26	SW NW	1903	40.0	Point 26	103
9 S	40 E	WM	7	NW SE	1893	10.0	Point 11	10
9 S	40 E	WM	9	NW SW	1908	16.8	Point 14	63
9 S	40 E	WM	10	SE NW	1865	15.9	Point 17	17
9 S	40 E	WM	18	NE NE	1888	33.6	Point 11	31
9 S	40 E	WM	18	SE NE	1888	32.8	Point 11	31
Total Acres:						149.1		

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

Certificate: 73406 in the name of BAKER VALLEY IRRIGATION DISTRICT (confirmed by Powder River, Consolidated decree)

Use: IRRIGATION

Priority Date: FEBRUARY 26, 1917

Rate: 0.28 CUBIC FOOT PER SECOND (cfs)

Acres: 22.0

Limit/Duty: ONE-EIGHTIETH cfs per acre during the irrigation season

Source: POWDER RIVER DRAINAGE BASIN, tributary to SNAKE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
9 S	40 E	WM	16	SW NW	POINT 13 (BALDOCK DITCH): 1700 FEET SOUTH AND 400 FEET EAST FROM THE NW CORNER OF SECTION 16

Authorized Place of Use:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	POD #	Tract	
9 S	40 E	WM	9	NE SW	22.0	13	4	

4. The portion of the third right to be transferred is as follows:

Certificate: 73587 in the name of THOMAS and KAREN RUDOLPH (confirmed by Powder River, Consolidated decree)

Use: IRRIGATION

Priority Date: 1906

Rate: 0.3 CUBIC FOOT PER SECOND (cfs)

Acres: 11.9

Limit/Duty: ONE-FORTIETH cfs per acre during the irrigation season

Source: POWDER RIVER, tributary to SNAKE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
9 S	40 E	WM	9	SW NW	CORRAL DITCH: 50 FEET NORTH AND 2720 FEET EAST FROM THE CENTER OF SECTION 8

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	40 E	WM	2	SE NW	11.9

5. The portion of the fourth right to be transferred is as follows

Certificate: 73599 in the name of UNITED STATES OF AMERICA (perfected under Permit S-32932)

Priority Date: JUNE 19, 1958

Rate: 0.08 CUBIC FOOT PER SECOND (cfs)

Acres: 3.0 IRRIGATION AND 84.9 SUPPLEMENTAL IRRIGATION

Limit/Duty: ONE-FORTIETH cfs per acre, not to exceed 3.5 acre-feet per acre during the irrigation season of each year

Source: POWDER RIVER AND STORAGE FROM PHILLIPS LAKE RESERVOIR CONSTRUCTED UNDER PERMIT R-5083, tributary to SNAKE RIVER

Authorized Point of Diversion (Primary Right):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
9 S	40 E	WM	16	SW NW	POINT 13 (BALDOCK-NEW HOME): 1700 FEET SOUTH AND 400 FEET EAST FROM THE NW CORNER OF SECTION 16

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	40 E	WM	10	SE SW	3.0

Authorized Points of Diversion (Supplemental Rights):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
10 S	40 E	WM	19	NW NE	POINT 6 (SMITH): 945 FEET SOUTH AND 1865 FEET WEST FROM THE NE CORNER OF SECTION 19

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
9 S	40 E	WM	21	NW SW	POINT 11 (SETTLERS SLOUGH): 2160 FEET NORTH AND 30 FEET EAST FROM THE SW CORNER OF SECTION 21
9 S	40 E	WM	16	SW NW	POINT 13 (BALDOCK-NEW HOME): 1700 FEET SOUTH AND 400 FEET EAST FROM THE NW CORNER OF SECTION 16
9 S	40E	WM	8	NE SE	POINT 15 (SATTEBURG WEST 1): 1560 FEET NORTH AND 290 FEET WEST FROM THE SE CORNER OF SETION 8
9 S	40 E	WM	9	SW NW	POINT 17 (CORRAL): 50 FEET NORTH AND 2720 FEET EAST FROM THE CENTER ¼ CORNER OF SECTION 8
9 S	40 E	WM	8	NE NE	POINT 18(ESTES WEST): 110 FEET SOUTH AND 600 FEET WEST FROM THE NE CORNER OF SECTION 8
8 S	40 E	WM	33	NW SW	POINT 26 (POWERS EAST 2): 2640 FEET NORTH AND 850 FEET EAST FROM THE SW CORNER OF SECTION 33

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	POD #
9 S	40 E	WM	2	SW NE	18.9	6
9 S	40 E	WM	2	SE NE	18.7	6
9 S	40 E	WM	7	NE SE	6.8	11
9 S	40 E	WM	8	SW NW	14.9	15
9 S	40 E	WM	9	SE SE	6.5	13
9 S	40 E	WM	10	SE NW	15.9	17
9 S	40 E	WM	10	SE SW	3.2	13
Total Acres:					84.9	

6. The portion of the fifth right to be transferred is as follows:

Certificate: 73610 in the name of U.S. BUREAU OF RECLAMATION (confirmed by Powder River, Consolidated decree)

Use: SUPPLEMENTAL IRRIGATION

Priority Date: JUNE 19, 1958

Limit/Duty: ONE-FORTIETH cfs per acre; not to exceed 3.5 acre-feet per acre during the irrigation season

Acres: 176.6

Source: PHILLIPS LAKE RESERVOIR, tributary to the SNAKE RIVER

Authorized Points of Diversion: 56 locations at Mason Dam and downstream on the Powder River

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	POD #
9 S	40 E	WM	7	NW SE	23.8	11
9 S	40 E	WM	8	NW SE	9.2	16
9 S	40 E	WM	8	SW SE	22.1	16

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	POD #
9 S	40 E	WM	9	NE SW	22.0	13
9 S	40 E	WM	9	NW SW	16.8	13
9 S	40 E	WM	9	SW SE	18.2	13
9 S	40 E	WM	18	NE NE	39.0	17
9 S	40 E	WM	18	SE NE	25.5	17
Total Acres:					176.6	

7. The portion of the sixth right to be transferred is as follows

Certificate: 73999 in the name of BAKER VALLEY IRRIGATION DISTRICT (confirmed by Powder River, Consolidated decree)

Use: SUPPLEMENTAL IRRIGATION

Priority Date: APRIL 26, 1982

Limit/Duty: ONE-FORTIETH; not to exceed 3.5 acre-feet per acre during the irrigation season

Acres: 151.8

Source: MASON RESERVOIR, tributary to SNAKE RIVER

Authorized Points of Diversion: 36 locations at Mason Dam and on the Powder River downstream of the dam.

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Owner	POD #
8 S	40 E	WM	28	NE SW	29.4	Black	26
8 S	40 E	WM	29	SE NW	33.9	Colton Cattle	23
8 S	40 E	WM	30	SE NW	33.9	Jacobs	18
8 S	40 E	WM	30	NE SE	18.2	Anderson	18
8 S	40 E	WM	30	SE SE	24.0	Anderson	18
9 S	40 E	WM	6	NW SW	12.4	Ward	11

8. Application T-8446 proposes to change the place of use and points of diversion of the transferred portion of the rights described by Certificate 73405 to:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Priority	Acres	Proposed PODs #	Tax Lot
8 S	40 E	WM	7	SW NW	1893	10.0	Point 29	1300
8 S	40 E	WM	7	NW SW	1908	16.8	Point 29	1300
8 S	40 E	WM	22	NE NW	1903	20.0	Point 26	300
8 S	40 E	WM	22	SE NW	1903	20.0	Point 26	300
8 S	40 E	WM	26	SW NW	1888	40.0	Point 26	4100
8 S	40 E	WM	27	NE NE	1888	26.4	Point 18	4100
8 S	40 E	WM	30	NE SE	1865	2.0	Point 18	5000
8 S	40 E	WM	30	SE SE	1865	2.0	Point 18	5000
9 S	40 E	WM	2	SE NW	1865	11.9	(POU ONLY)	900
Total Acres:						149.1		

9. The locations of the proposed points of diversion described in Finding of Fact #8 are located as follows:

Proposed Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
9 S	40 E	WM	8	NE NE	POINT 18 (ESTES WEST): 110 FEET SOUTH AND 600 FEET WEST FROM THE NE CORNER OF SECTION 8
8 S	40 E	WM	33	NW SW	POINT 26 (POWERS EAST 2, AKA GEDDES SNAVELEY): 2640 FEET NORTH AND 850 FEET EAST FROM THE SW CORNER OF SECTION 33
8 S	40 E	WM	28	SE NW	POINT 29 (TAGGART WEST): 2650 FEET NORTH AND 1650 FEET EAST FROM THE SW CORNER OF SECTION 28

10. Application T-8446 proposes to change the place of use and points of diversion for the rights described by Certificate 73406 to:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Proposed POD #	Priority	Tax Lot
8 S	40 E	WM	7	SW NW	19.5	Point 29	2/26/1917	1300
8 S	40 E	WM	7	NW SW	2.5	Point 29	2/26/1917	1300

11. Application T-8446 proposes to change the place of use and points of diversion of the transferred portion of the rights described by Certificate 73587 as follows:

Twp	Rng	Mer	Sec	Q-Q	Acres	Proposed POD #	Priority	Tax Lot
8 S	39 E	WM	12	NE SE	1.4	Point 29	1906	3900
8 S	40 E	WM	7	SW NW	10.5	Point 29	1906	1300

12. The location of the proposed point of diversion described in Findings of Fact #10 and #11 is as follows:

Proposed Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
8 S	40 E	WM	28	SE NW	POINT 29 (TAGGART WEST): 2650 FEET NORTH AND 1650 FEET EAST FROM THE SW CORNER OF SECTION 28

13. Application T-8446 proposes to diminish 3.0 acres of Irrigation from Certificate 73599 to Supplemental Irrigation. The authorized location of these acres is the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec 10, T 9 S, R 40 E (also described in Finding of Fact #5):

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	POD #
8S	40E	WM	29	SE NW	3.0	4700	23

14. Application T-8446 proposes to change the point of diversion for the transferred portion of the rights described by Certificate 73599 to:

Proposed Point of Diversion

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
9 S	40 E	WM	5	SE NE	POINT 23 (COMPANY WEST DITCH): 1600 FEET SOUTH AND 320 FEET WEST FROM THE NE CORNER OF SECTION 5

15. Application T-8446 proposes to change the place of use and points of diversion of the transferred portion of the rights described by Certificate 73599 to:

Proposed Place of Use

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	POD #
8 S	40 E	WM	22	SE NW	37.6	300	26
8 S	40 E	WM	29	SE NW	2.5	4700	23
8 S	40 E	WM	30	SE NW	23.4	3700	18
8 S	40 E	WM	30	NE SE	9.5	5000	18
9 S	40 E	WM	2	SE NW	11.9	900	17, 11
Total Acres:					84.9		

16. Application T-8446 proposes to change the place of use of the transferred portion of the rights described by Certificate 73610 to:

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	POD #
8 S	40 E	WM	28	NE SW	32.3	800	26
8 S	40 E	WM	28	NW SE	3.9	800	26
8 S	40 E	WM	28	SW SE	2.6	800	26
8 S	40 E	WM	29	SE NW	28.4	4700	23
8 S	40 E	WM	30	SE NW	10.5	3700	18
8 S	40 E	WM	30	NE SE	8.7	5000	18
8 S	40 E	WM	30	SE SE	24.0	5000	18
9 S	40 E	WM	6	SW NW	9.0	700	11
9 S	40 E	WM	6	NE SW	7.2	700	11
9 S	40 E	WM	6	NW SW	40.0	800	11
9 S	40 E	WM	18	NW NE	10.0	100	11
Total Acres:					176.6		

17. Application T-8446 proposes to change the place of use of the transferred portion of the rights described by Certificate 73999 to:

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	POD #
8 S	40 E	WM	22	NE NW	40.0	300	26
8 S	40 E	WM	22	NWNW	40.0	300	26
8 S	40 E	WM	22	SW NW	40.0	300	26
8 S	40 E	WM	22	SE NW	2.4	300	26

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	POD #
9 S	40 E	WM	2	NE NE	11.4	200	6
9 S	40 E	WM	9	NE NE	2.8	900	17, 2
9 S	40 E	WM	9	NW NE	5.5	900	17, 2
9 S	40 E	WM	9	SW NE	6.5	900	17, 2
9 S	40 E	WM	9	SE NE	1.2	900	17, 2
9 S	40 E	WM	9	SE NW	1.0	200	17, 2
9 S	40 E	WM	9	NE SW	1.0	200	17, 1
Total Acres:					151.8		

18. Notice of the application for transfer was published on February 29, 2000, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
19. On May 19, 2005, the Department issued a preliminary determination proposing to approve Transfer T-8446 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 May 24, 2005, and in the Record-Courier newspaper on June 2, 9 and 16, 2005, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
20. 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.
21. Diversion structures, ditches pumps, pipelines, and sprinkler systems sufficient to use the full amount of water allowed under the existing rights are present.
22. The proposed change would not result in enlargement of the rights.
23. The proposed change would not result in injury to other water rights.
24. Affidavits were received from owners of certain lands and the water rights appurtenant to them. Portions of the rights described in Certificates 22855, 58967, 73405 and 73522 have been abandoned and are requested to be cancelled.
25. The portion of the first right to be cancelled is as follows:
Certificate: 22855 in the name of A. S. BOYD (perfected under Permit U-300)
Use: SUPPLEMENTAL IRRIGATION
Priority Dates: SEPTEMBER 1, 1949
Quantity: 0.08 CFS
Rate/Duty: ONE-EIGHTIETH; not to exceed 3.5 acre-feet per acre during the irrigation season
Acres: 6.8
Source: A WELL

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
9 S	40 E	WM	7	SE SE

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	40 E	WM	7	NE SE	6.8

26. The portion of the second right to be cancelled is as follows:

Certificate: 58967 in the name of A.S. BOYD AND COMPANY (perfected under Permit G-7892)

Use: SUPPLEMENTAL IRRIGATION

Priority Dates: MAY 26, 1977

Quantity: 0.29 CFS

Rate/Duty: 1/80 cfs per acre; not to exceed 3.0 af per acre during the irrigation season

Acres: 23.8

Source: A WELL in the POWDER RIVER BASIN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
9 S	40 E	WM	7	SE SE	40 FEET NORTH AND 120 FEET WEST FROM THE SE CORNER OF SECTION 7

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	40 E	WM	7	NW SE	23.8

27. The portion of the third right to be cancelled is as follows:

Certificate: 73405 in the name of BAKER VALLEY IRRIGATION DISTRICT

Use: IRRIGATION

Priority Dates: 1869, 1888 1889, 1891 1893, 1903, March 1905

Quantity: 1.80 CFS

Rate/Duty: 1/40 cfs per acre during the irrigation season

Acres: 72.0

Source: POWDER RIVER, tributary to the SNAKE RIVER

Authorized Place of Use:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	POD	Priority Date	Tract	Acres
8 S	40 E	WM	27	NE NE	26	1903	103	26.4
9 S	40 E	WM	2	SW NE	6	March 1905	91	9.0
9 S	40 E	WM	7	NE SE	11	1891	10	6.8
9 S	40 E	WM	7	NW SE	11	1893	10	13.8
9 S	40 E	WM	8	SW NW	15	1889	22	6.6
9 S	40 E	WM	9	SE SE	13	1869	89	6.5
9 S	40 E	WM	18	SE NE	17	1888	31	2.9
Total Acres:								72.0

28. The portion of the fourth right to be cancelled is as follows:

Certificate: 73522 in the name of CARL A. AND FRED WARNER (perfected under Permit S-11973)

Use: IRRIGATION

Priority Dates: November 21, 1935

Quantity: 1.52 CFS

Rate/Duty: 1/40 cfs per acre during the irrigation season

Acres: 60.7

Source: WASTE WATER FROM THE POWDER RIVER, tributary to the SNAKE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q
8 S	40 E	WM	17	SW NW
8 S	40 E	WM	17	NW SW
8 S	40 E	WM	18	NE¼
8 S	40 E	WM	18	N½ SE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	40 E	WM	7	SW NW	40.0
8 S	40 E	WM	7	NW SW	19.3
8 S	39E	WM	12	NE SE	1.4

Conclusions of Law

The changes in place of use and point of diversion proposed in application T-8446 are consistent with the requirements of 540.505 to 540.580 and OAR 690-380-5000. The portions of the rights described as abandoned should be cancelled and the primary rights to be diminished to supplemental should be diminished.

Now, therefore, it is ORDERED:

1. The changes in point of diversion and place of use proposed in application T-8446 are approved, the abandoned portions of the rights are cancelled, and the rights described in Finding of Fact #13 are diminished.

2. Water right certificates 73587, 22855, 58967, and 73522 are cancelled. Water right certificates 73405, 73406, 73599, 73610, and 73999 are modified.
3. New certificates will be issued describing those portions of the rights evidenced by certificates 73587, 22855, 58967, and 73522 that are not involved in this transfer and not cancelled.
4. The right to the use of the water is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in Certificates 73405, 73406, 73587, 73599, 73610, 73999 and any related decree.
5. The former place of use shall no longer be irrigated as part of the water rights transferred.
6. Prior to diverting water, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and 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 Department shall issue superseding certificates describing the rights on a determination that it is necessary to produce certificates, for bookkeeping, describing the water rights that are in the name of Baker Valley Irrigation District, the United States of America, and the U. S. Bureau of Reclamation.
8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. 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.
9. When satisfactory proof of the completed changes is received, new certificates confirming the rights in the names of private individuals will be issued.

Dated at Salem, Oregon this 24th day of May, 2007.



Phillip C. Ward, Director

Mailing date: MAY 29 2007