# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application	)	FINAL ORDER APPROVING
T-9921, Wallowa County, Oregon	)	TEMPORARY CHANGE IN PLACE OF
	)	USE

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 diversion or 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**

Richard Makens 69622 Sherrod Road Wallowa, Oregon 97885

## **Findings of Fact**

- 1. Richard Makens filed an application to temporarily transfer the place of use under Certificates 81223 and 81224 for a period of five years. The Department assigned the application number T-9921.
- 2. The portion of the first right to be transferred is as follows:

**Certificate**: 81223 in the name of West Side Irrigation and Water Ditch Company

Use: Irrigation of 52.8 acres (\*to be diminished to supplemental irrigation for

duration of temporary transfer)

Priority Date: March 27, 1901

Rate/Duty: Limited to an amount actually used beneficially, and shall not exceed 1½

acre-feet per acre during any period of 30 days prior to July 31<sup>st</sup> of each year and thereafter not to exceed 1 acre-foot during the entire remainder of the

irrigation season

**Source:** Lostine River, tributary to the Wallowa River

**Authorized Point of Diversion:** 

Location
Westside Ditch

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.

### **Authorized Place of Use:**

Tow	nship	Rai	nge	Meridian	Sec	1/4 1/4	Acres
1	S	43	Е	W.M.	16	NE SE	32.8
1	S	43	Е	W.M.	16	NW SE	20.0

3. Application T-9921 proposes to change the place of use of the right to:

Town	nship	Rai	nge	Meridian	Sec	1/4 1/4		Acres
1	N	42	Е	W.M.	36	NE	NE	6.2*
1	N	42	Е	W.M.	36	NW	NE	15.2*
1	N	42	Е	W.M.	36	SE	NE	25.0*
1	N	42	Е	W.M.	36	NE	SE	6.4*

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

**Certificate**: 81224 in the name of Minam Lake Reservoir Co.

**Use:** Supplemental Irrigation of 37.8 acres

Priority Date: May 29, 1916

Quantity: 0.20 cfs

Rate: 1/80 cfs per acre

**Source:** Minam Lake, tributary to the Wallowa River

**Authorized Point of Diversion:** 

Tow	nship	Rai	nge	Meridian	Sec	1/4 1/4		Location
4	S	44	Е	W.M.	29	NW	SW	Minam Lake

### **Authorized Place of Use:**

Town	nship	Rai	Range Meridian Se		Sec	1/4 1/4		Acres
1	S	43	Е	W.M.	16	NE	SE	32.8
1	S	43	Е	W.M.	16	NW	SE	5.0

5. Application T-9921 proposes to change the place of use of the right to:

Town	Township Range		Meridian	Sec	1/4 1/4		Acres	
1	N	42	E	W.M.	36	NE	NE	6.2
1	N	42	Е	W.M.	36	NW	NE	15.2
1	N	42	E	W.M.	36	SE	NE	16.4

- 6. The proposed places of use have an existing water right appurtenant to them, being Permit S-39916 from Little Bear Creek. This water right permit will be exercised until water becomes unavailable from Little Bear Creek. At that time, the above referenced water rights will be exercised.
- 7. Notice of the application for temporary transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.

- 8. Water has been used within the last five years according to the terms and conditions of the right and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- 9. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
- 10. The proposed change would not result in enlargement of the right.
- 11. 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 application T-9921 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 proposed in application T-9921 is approved.
- 2. The former place of use **shall not** be irrigated as part of this water right during the 2005, 2006, 2007, 2008 and 2009 irrigation seasons.
- 3. The use shall revert to the authorized place of use at the end of the 2009 irrigation season.
- 4. The approval of this temporary transfer may be revoked or modified if the Department finds the change causes injury to any existing water right.
- 5. A subsequent application for permanent transfer of Certificates 81223 and 81224 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.
- 6. 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 81223 and 81224 and shall be subject to all other conditions and limitations contained in any related decree.
- 7. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
- 8. When required by the Department, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water used. 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.

9. The use of the remaining water right described by Certificates 81223 and 81224 shall continue to be in accordance with the terms and conditions of Certificates 81223 and 81224.

Dated at Salem, Oregon this 2005.

Phillip C. Ward, Director

Mailing date: JUN 2 4 2005