

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-11194, Baker, Union County) TEMPORARY CHANGES IN PLACE
) OF USE AND POINTS 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

Alva R. and Susan C. Mascall
PO Box 249
North Powder, OR 97867

Agent

Bagett, Griffith and Blackman
2006 Adams Ave
Lagrande, OR 97850

Findings of Fact

Background

1. On January 14, 2010, Alva R. and Susan C. Mascall filed an application to change the place of use and point of diversion under Certificates 1493 and 79534. The Department assigned the application number T-11194.
2. On March 31, 2011, the applicants requested that application T-11194 be modified to a temporary change in place of use and points of diversion under Certificates 1493 and 79534 for a period of 5 years.
3. The portion of the first right to be temporarily transferred is as follows:

Certificate: 1493 in the name of FRANK MCALLISTER (confirmed by North Powder River decree)
Use: IRRIGATION OF 23.4 ACRES
Priority Date: 1893

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.

Rate/Duty: 0.585 CUBIC FOOT PER SECOND (CFS) FROM MARCH 1 TO JULY 1 AND 0.2925 CFS FROM JULY 1 TO OCTOBER 1; THE TOTAL QUANTITY DIVERTED DURING EACH IRRIGATION SEASON NOT TO EXCEED 58.5 ACRE FEET

Source: NORTH POWDER RIVER, tributary to the POWDER RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Ditches
6 S	39 E	WM	28	SE SW	JACOBSON DITCH
6 S	39 E	WM	28	SW SE	HARLAN SANDERS DITCH

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	39 E	WM	27	NE SW	11.0
6 S	39 E	WM	27	SE SW	12.4

4. Temporary Transfer Application T-11194 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	39 E	WM	22	SE SW	5.5
6 S	39 E	WM	27	NE NW	5.9
6 S	39 E	WM	27	NW NW	12.0

5. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-11194 proposes to move the authorized points of diversion approximately 2800 feet (from Harlan Sanders Ditch) and 4060 feet (from Jacobson Ditch) downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	39 E	WM	28	NE SE	LUN DITCH: 2600 FEET NORTH AND 440 FEET WEST FROM THE SE CORNER OF SECTION 28

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

Certificate: 79534 in the name of ANDREW O. LUN (confirmed by North Powder River decree, 1916)

Use: IRRIGATION OF 23.4 ACRES

Priority Date: 1870

Rate: 0.585 CUBIC FOOT PER SECOND (CFS) FROM MARCH 1 TO JULY 1 AND 0.2925 CFS FROM JULY 1 TO OCTOBER 1; THE TOTAL QUANTITY DIVERTED DURING EACH IRRIGATION SEASON NOT TO EXCEED 58.5 ACRE FEET

Source: NORTH POWDER RIVER, tributary to the POWDER RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	39 E	WM	28	NE SE	LUN DITCH: 2600 FEET NORTH AND 440 FEET WEST FROM THE SE CORNER OF SECTION 28

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	39 E	WM	22	SE SW	5.5
6 S	39 E	WM	27	NE NW	5.9
6 S	39 E	WM	27	NW NW	12.0

7. Temporary Transfer application T-11194 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	39 E	WM	27	NE SW	11.0
6 S	39 E	WM	27	SE SW	12.4

8. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-11194 proposes to move the authorized points of diversion approximately 2800 feet (to Harlan Sanders Ditch) and 4060 feet (to Jacobson Ditch) upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	39 E	WM	28	SE SW	JACOBSON DITCH: 150 FEET NORTH AND 2100 FEET EAST FROM THE SW CORNER OF SECTION 28
6 S	39 E	WM	28	SW SE	HARLAN SANDERS DITCH: 850 FEET NORTH AND 2280 FEET WEST FROM THE SE CORNER OF SECTION 28

9. Notice of the application for transfer was published on February 15, 2011, and April 5, 2011, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notices.
10. Temporary Transfer Application T-11194 proposes to temporarily transfer water rights within the boundaries of Powder Valley Water District. The district was notified of the proposed temporary transfer and indicated that the district did not object to the transfer.

Temporary Transfer Review Criteria [OAR 690-380-4010(2)]

11. Water has been used within the last five years according to the terms and conditions of the rights, and under terms and conditions of temporary transfer T-11006, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
12. Diversion structures and ditches sufficient to use the full amount of water allowed under the existing rights are present.
13. The proposed change would not result in enlargement of the rights.
14. The proposed change would not result in injury to other water rights.

Conclusions of Law

The temporary changes in place of use and points of diversion to convey water to the temporary places of use proposed in Temporary Transfer Application T-11194 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 and points of diversion to convey water to the temporary places of use proposed in Temporary Transfer Application T-11194 are approved.
2. The former places of use **shall not** be irrigated as part of these water rights during the 2015, 2016, 2017, 2018 and 2019 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2019 irrigation season. The authorization to use the proposed points of diversion shall be terminated concurrently.
4. The approval of this temporary transfer may be revoked or modified if the Department finds the changes cause injury to any existing water right.
5. 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 1493 and 79534.
6. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
7. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
8. The use of the remaining water rights described by Certificates 1493 and 79534 shall continue to be in accordance with the terms and conditions of Certificates 1493 and 79534.

Dated at Salem, Oregon this 13 day of May, 2011.


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

Mailing Date: MAY 19 2011