

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

In the Matter of Transfer Application) FINAL ORDER APPROVING AN
T-8697, Baker County) ADDITIONAL POINT OF DIVERSION
) AND CORRECTIONS TO
) CERTIFICATES

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, 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

Baker Valley Irrigation District
3895 10th Street
Baker City, OR 97814

Findings of Fact

On February 20, 2001, Baker Valley Irrigation District filed a transfer application to add a point of diversion under Certificates 4070, 4387, 73405, 73406, 73410, 73552, 73567, 73572, 73580, 73583, 73593, 73594, 73599, 73610, and 73999. The Department assigned the application number T-8697.

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

Certificate: 4070 in the name of Clayton Coleman
Use: Irrigation of 20.0 acres
Priority Date: May 6, 1876
Rate/Duty: 1/40 cubic foot per second (cfs) per acre
Source: Powder River, tributary to Snake River

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
8	S	40	E	W.M.	29	NW NE	7.0
8	S	40	E	W.M.	29	SW NE	13.0

2. The entirety of the second right to be transferred is as follows:

Certificate: 4387 in the name of Orrin R. Osborn

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.

Use: Irrigation of 150.0 acres
Priority Date: 1863
Rate/Duty: 1/40 cfs per acre
Source: Powder River, tributary to Snake River

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
8	S	40	E	W.M.	29	NE NW	40.0
8	S	40	E	W.M.	29	NW NW	40.0
8	S	40	E	W.M.	29	SW NW	35.0
8	S	40	E	W.M.	29	SE NW	35.0

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

Certificate: 73405 in the name of Baker Valley Irrigation District
Use: Irrigation of 430.3 acres
Priority Dates: 1864, 1865, 1866, 1869, May 6, 1876, 1877, 1878, 1883, 1885, 1889, 1898, and 1899
Rate/Duty: 1/40 cfs per acre
Source: Powder River, tributary to Snake River

Authorized Points of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
9	S	40	E	W.M.	5	NE SE	Point 20 (McEnroe East): 2250' N & 320' W from the SE corner, Sec 5.
9	S	40	E	W.M.	5	SE NE	Point 22 (Company East): 1600' S & 280' W from the NE corner, Sec 5.
9	S	40	E	W.M.	5	SE NE	Point 23 (Company West): 1600' S & 320' W from the NE corner, Sec 5.
8	S	40	E	W.M.	33	SW SW	Point 24 (Wendt East): 1000' N & 600' E from the SW corner, Sec 33.
8	S	40	E	W.M.	33	SW SW	Point 25 (Wendt West): 1010' N & 560' E from the SW corner, Sec 33.

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	POD	Priority	Acres	Tract
8	S	40	E	W.M.	20	NW NW	23	1866	26.8	60
8	S	40	E	W.M.	20	SW NW	23	1866	38.8	60
8	S	40	E	W.M.	32	NE NE	23	5/6/1876	6.2	27
8	S	40	E	W.M.	32	NE NE	23	1878	5.5	27
8	S	40	E	W.M.	32	SE NE	23	5/6/1876	34.0	27

Township	Range	Meridian	Sec	¼ ¼	POD	Priority	Acres	Tract		
8	S	40	E	W.M.	33	NE SW	23	1889	5.0	23
8	S	40	E	W.M.	33	NE SW	22	1885	35.0	77
8	S	40	E	W.M.	33	NW SW	23	1885	13.0	77
8	S	40	E	W.M.	33	NW SW	25	1885	5.8	77
8	S	40	E	W.M.	33	NW SW	24	1885	13.0	77
8	S	40	E	W.M.	33	SW SW	23	1885	12.0	77
8	S	40	E	W.M.	33	SW SW	22	1885	19.0	77
8	S	40	E	W.M.	33	SW SW	25	1885	0.6	77
8	S	40	E	W.M.	33	SW SW	24	1885	6.4	77
8	S	40	E	W.M.	33	SE SW	23	1864	1.0	21
8	S	40	E	W.M.	33	SE SW	23	1883	7.8	21
8	S	40	E	W.M.	33	SE SW	23	1865	6.0	22
8	S	40	E	W.M.	33	SE SW	23	1889	15.0	22
8	S	40	E	W.M.	33	SE SW	23	5/6/1876	1.8	78
9	S	40	E	W.M.	4	NW NE	20	1899	6.0	50
9	S	40	E	W.M.	4	SW NE	20	1889	24.0	49
9	S	40	E	W.M.	4	SW NE	20	1899	4.0	50
9	S	40	E	W.M.	4	NE NW	23	1869	2.0***	105
9	S	40	E	W.M.	4	NW NW	22	5/6/1876	2.4	78
9	S	40	E	W.M.	4	NW NW	22	1869	5.0	105
9	S	40	E	W.M.	4	NW NW	22	1898	30.0	105
9	S	40	E	W.M.	4	SE NW	20	1877	32.0	49
9	S	40	E	W.M.	5	NE NE	23	5/6/1876	28.2	78
9	S	40	E	W.M.	5	NE NE	23	1869	10.0	78
9	S	40	E	W.M.	5	SE NE	20	1877	36.0	49

***Certificate Error, See Finding of Fact #23 and #24

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

Certificate: 73406 in the name of Baker Valley Irrigation District

Use: Irrigation of 28.3 acres

Priority Date: May 2, 1918

Rate/Duty: 1/80 cfs per acre

Source: Powder River, tributary to Snake River

Authorized Point of Diversion:

Township	Range	Meridian	Sec	¼ ¼	Survey Coordinates		
9	S	40	E	W.M.	5	SE NE	Point 23 (Company WestDitch): 1600' S & 320' W from the NE corner, Sec 5.

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres	Tract
8	S	40	E	W.M.	32	NE NE	28.3	7

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

Certificate: 73410 in the name of Michael J. Widman

Use: Irrigation of 40.0 acres

Priority Date: May 2, 1918

Quantity: 0.5 cubic foot per second

Rate/Duty: 1/80 cfs per acre

Source: Powder River, tributary to Snake River

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
8	S	40	E	W.M.	32	NW NE	40.0

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

Certificate: 73552 in the name of J. A. Geddes

Use: Irrigation of 80.0 acres

Priority Date: May 6, 1876

Rate/Duty: 1/40 cfs per acre

Source: Powder River, tributary to Snake River

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres	Tract
8	S	40	E	W.M.	32	SW NE	40.0	8
8	S	40	E	W.M.	32	NW SE	40.0	8

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

Certificate: 73567 in the name of Mary Landreth

Use: Irrigation of 60.0 acres

Priority Date: 1869

Rate/Duty: 1/40 cfs per acre

Source: Powder River, tributary to Snake River

Authorized Point of Diversion:

ESTES DITCH

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres	Tract
8	S	40	E	W.M.	32	NE NW	40.0	1
8	S	40	E	W.M.	32	SE NW	20.0	1

8. The entirety of the eighth right to be transferred is as follows:

Certificate: 73572 in the name of Joseph McEnroe, Jr.
Use: Irrigation of 80.0 acres
Priority Date: 1877
Rate/Duty: 1/40 cfs per acre
Source: Powder River, tributary to Snake River
Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
9	S	40	E	W.M.	5	NE SE	Tract 1 (McEnroe East Ditch): 2250' N & 320' W from the SE corner, Sec 5.
9	S	40	E	W.M.	5	NE SE	Tract 2 (McEnroe West Ditch): 2250' N & 360' W from the SE corner, Sec 5.

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	Acres
9	S 40 E	W.M.	4	SW NW	40.0
9	S 40 E	W.M.	5	SW NE	40.0

9. The portion of the ninth right to be transferred is as follows:

Certificate: 73580 in the name of Heirs of E.P. Perkins
Use: Irrigation of 0.7 acres
Priority Date: 1866
Quantity: 0.02 cfs
Rate/Duty: 1/40 cfs per acre
Source: Powder River, tributary to Snake River
Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
8	S	40	E	W.M.	33	NW SW	***Powers East 2 Ditch; 2640' N & 850' E from the SW corner, Sec 33
***Error on Certificate, See Finding of Fact #25							

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	Acres
8	S 40 E	W.M.	20	SE NW	0.7

10. The portion of the tenth right to be transferred is as follows:

Certificate: 73583 in the name of Arven & Ardeen Anderson
Use: Irrigation of 228.8 acres (Tract 1)
Priority Dates: 1863, 1866, and 1885
Rate/Duty: 1/40 cfs per acre
Source: Powder River, tributary to Snake River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
8	S	40	E	W.M.	33	NW SW	***Powers East 2 Ditch; 2640' N & 850' E from the SW corner, Sec 33
***Error on Certificate, See Finding of Fact #25							

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Priority	Acres
8	S	40	E	W.M.	29	NE SW	1866	40.0
8	S	40	E	W.M.	29	NW SW	1866	35.0
8	S	40	E	W.M.	29	SW SW	1866	15.0
8	S	40	E	W.M.	29	SW SW	1863	25.0
8	S	40	E	W.M.	29	SE SW	1866	40.0
8	S	40	E	W.M.	29	NW SE	1885	10.0
8	S	40	E	W.M.	29	NW SE	1866	18.0
8	S	40	E	W.M.	29	SW SE	1885	10.0
8	S	40	E	W.M.	29	SW SE	1866	30.0
8	S	40	E	W.M.	29	SE SE	1866	5.8

11. The entirety of the eleventh right to be transferred is as follows:

Certificate: 73593 in the name of Richard W. Kruger & Robert and Lori Thomas
Use: Irrigation of 80.0 acres
Priority Date: 1869
Rate/Duty: 1/40 cfs per acre
Source: Powder River, tributary to Snake River

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
8	S	40	E	W.M.	32	SW SE	40.0
9	S	40	E	W.M.	5	NW NE	40.0

12. The entirety of the twelfth right to be transferred is as follows:

Certificate: 73594 in the name of Robert Thomas
Use: Irrigation of 80.0 acres
Priority Date: May 6, 1876
Quantity: 2.0 cfs
Rate/Duty: 1/40 cfs per acre
Source: Powder River, tributary to Snake River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
9	S	40	E	W.M.	8	NE NE	***Estes East Ditch: 100' S & 550' W from the NE corner, Sec. 8.
***Error on Certificate, See Finding of Fact # 26							

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	Acres
8	S	40	E	W.M.	32 NE SE 40.0
8	S	40	E	W.M.	32 SE SE 40.0

13. The portion of the thirteenth right to be transferred is as follows:

Certificate: 73599 in the name of United States of America
Use: Irrigation of 19.8 acres
Priority Date: June 19, 1958
Quantity: 0.50 cfs
Rate/Duty: 1/40 cfs per acre, not to exceed 3.5 acre-feet per acre per year
Source: Powder River and Phillips Reservoir, tributaries to Snake River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
9	S	40	E	W.M.	5	NE SE	McEnroe East Ditch: 2250' N & 320' W from the SE corner, Sec 5.
9	S	40	E	W.M.	5	SE NE	Company East Ditch: 1600' S & 280' W from the NE corner, Sec 5.

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	Acres
9	S	40	E	W.M.	4 SW NE 5.7
9	S	40	E	W.M.	4 SE NW 8.0
8	S	40	E	W.M.	33 SE SW 1.3***
*** Error on Certificate, See Finding of Fact #27 and #28					

14. The portion of the fourteenth right to be transferred is as follows:

Certificate: 73610 in the name of U. S. Bureau of Reclamation
Use: Irrigation of 18.4 acres and Supplemental Irrigation of 20.0 acres
Priority Date: June 19, 1958
Quantity: 0.96 cfs
Rate/Duty: 1/40 cfs per acre, not to exceed 3.5 acre-feet per acre per year
Source: Powder River, tributary to Snake River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
9	S	40	E	W.M.	5	SE NE	Point 22 (Company East): 1600' S & 280' W from the NE corner, Sec 5.

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres	Use
9	S	40	E	W.M.	4	NE NW	18.4	P
9	S	40	E	W.M.	4	NE NW	20.0	S

15. The portion of the fifteenth right to be transferred is as follows:

Certificate: 73999 in the name of Baker Valley Irrigation District
Use: Irrigation of 82.4 acres, and Supplemental Irrigation of 2.0 acres
Priority Date: April 26, 1982
Quantity: 2.11 cfs
Rate/Duty: 1/40 cfs per acre, not to exceed 3.5 acre-feet per acre per year
Source: Powder River and Mason Reservoir, tributaries to Snake River
Authorized Points of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
9	S	40	E	W.M.	5	SE NE	Point 22 (Company East): 1600' S & 280' W from the NE corner, Sec 5.
9	S	40	E	W.M.	5	NE SE	Point 20 (McEnroe East): 2250' N & 320' W from the SE corner, Sec 5.
9	S	40	E	W.M.	5	SE NE	Point 23 (Company West): 1600' S & 320' W from the NE corner, Sec 5.

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	POD	Acres	Use	Owner
8	S	40	E	W.M.	29	SW NW	23	5.0	P	Colton
8	S	40	E	W.M.	29	SE NW	23	5.0	P	Colton
8	S	40	E	W.M.	29	NW SW	23	5.0	P	Anderson
8	S	40	E	W.M.	29	NE SE	23	23.2	P	Anderson
8	S	40	E	W.M.	29	NW SE	23	8.5	P	Anderson
8	S	40	E	W.M.	29	SE SE	23	34.0	P	Anderson
8	S	40	E	W.M.	33	SE SW	22	2.9	P	Thomas
9	S	40	E	W.M.	4	SW NE	20	0.8	P	McEnroe
9	S	40	E	W.M.	4	NE NW	22	2.0	S	Kruger

16. Transfer Application T-8697 proposes to add an additional point of diversion, to all of the above water rights, upstream in the Powder River at the following location:

Township		Range		Meridian	Sec	¼ ¼		Survey Coordinates
9	S	40	E	W.M.	8	NE	NE	Point 18 (Estes W): 110' S & 600' W from the NE corner, Sec. 8

17. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
18. On April 17, 2006, the Department issued a preliminary determination proposing to approve Transfer T-8697 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 April 25, 2006, and in the Baker City Record-Courier newspaper on July 13, 20 and 27, 2006 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
19. Water has been used within the last five years according to the terms and conditions of the rights and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
20. Diversion structures and ditches sufficient to use the full amount of water allowed under the existing rights are 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.

Correction of Water Right Certificates

23. Several scrivener's errors were found in the certificates affected by Transfer Application T-8697. The errors will be corrected when superseding certificates are issued and are listed below.
24. Certificate 73405 fails to include 20.0 acres located in NE NW, Township 9 South, Range 40 East, Section 4, Tract 105, as recorded in an order of the Water Resources Director entered February 25th, 1997, at Special Order Volume 51, page 148. The certificate should be corrected to show 22.0 acres in the NE¼ NW¼ of Section 4, Tract 105, Township 9 South, Range 40 East. (See Finding of Fact #3.)
25. Certificates 73580 and 73583 both list Powers East 2 Ditch as the point of diversion. (See Findings of Fact #9 & #10.) Based on the original certificates, the point of diversion should be listed as Company West (aka Geddes Osborn Chambers) located as follows:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
9	S	40	E	W.M.	5	SE NE	Point 23 (Company W) – 1600' S & 320' W from the NE corner, Section 5.

26. Certificate 73594 lists Estes East as the point of diversion. (See Finding of Fact #12.) Based on the original certificate, the point of diversion should be Company West (aka Geddes Osborn Chambers) located as follows:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
9	S	40	E	W.M.	5	SE NE	Point 23 (Company W) – 1600' S & 320' W from the NE corner, Section 5.

27. Certificate 73599 shows 31.6 acres of supplemental irrigation from stored water and 1.3 acres of primary irrigation from Powder River and stored water in Township 8 South, Range 40 East, Section 33 SE¼ SW¼. This should be 26.8 acres of supplemental irrigation from storage and 6.1 acres of primary irrigation from Powder River and storage. (See Finding of Fact #13.)
28. Certificate 73599 shows 8.0 acres of supplemental irrigation from stored water in Township 8 South, Range 40 East, Section 4, SE¼ NE¼. This should be 8.0 acres of primary irrigation from Powder River and storage.

Conclusions of Law


The proposed changes in point of diversion in Transfer Application T-8697 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 diversion proposed in application T-8697 are approved.
2. Certificates 73405, 73406, 73599, 73610 and 73999 are modified. The Department will issue superseding certificates on a determination that is necessary to produce certificates describing the rights.
3. Water right Certificates 4070, 4387, 73410, 73552, 73567, 73572, 73580, 73583, 73593 and 73594 are cancelled.
4. New certificates will be issued describing the portions of the rights not involved in this transfer under Certificates 73410, 73552, 73567, 73580 and 73583.
5. 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 4070, 4387, 73405, 73406, 73410, 73552, 73567, 73572, 73580, 73583, 73593, 73594, 73599, 73610, 73999 and any related decree.

6. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2007**. 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.
7. The quantity of water diverted at the additional point of diversion, together with that diverted at the old points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.
8. When required by the Department, 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.
9. When satisfactory proof of the completed changes is received, new certificates confirming the portions of the rights transferred under Certificates 4070, 4387, 73410, 73552, 73567, 73572, 73580, 73583, 73593 and 73594 will be issued.

Dated at Salem, Oregon this 27th day of September, 2006.



Phillip C. Ward, Director

Mailing date: OCT 09 2006