

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

In the Matter of Transfer Application) FINAL ORDER
T-9780, Baker County) APPROVING A CHANGE IN
) CHARACTER OF USE AND
) CANCELLATION OF WATER RIGHTS

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

DUANE A BENNEHOFF
999 VALLEY AVE
BAKER CITY OR 97814

Receiving Landowner

WILLMA C PHEGLEY
525 S BRIDGE ST
BAKER CITY OR 97814

Findings of Fact

1. On 9-2-2004, Duane Bennehoff filed a transfer application to change the character of use under Certificate 34411. The Department assigned the application number T-9780.
2. Willma C Phegley is the receiving landowner. The Department’s records will be changed to show this landowner is responsible for completion of the changes. All notices and correspondence should be sent to this landowner.
3. The right to be transferred is as follows:

Certificate: 34411 in the name of ANDREW MCKINNEY (perfected under Permit S-30275)

Use: SUPPLEMENTAL IRRIGATION of 15.20 ACRES

Priority Date: FEBRUARY 19, 1965

Rate: 0.38 CUBIC FOOT PER SECOND

Limit/Duty: ONE-FORTIETH cfs per acre, not to exceed 3.5 acre-feet per acre per year

Source: SUTTON CREEK, tributary to POWDER RIVER (SNAKE RIVER)

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
9 S	40 E	WM	21	SE SW	1180 FEET SOUTH & 1440 FEET WEST FROM SE CORNER, NW SE OF SECTION 21

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a 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:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	40 E	WM	21	NE SW	11.2
9 S	40 E	WM	21	NW SW	3.2
9 S	40 E	WM	21	SE SW	0.8

4. Application T-9780 proposes to change the character of use to PRIMARY IRRIGATION.

5. An affidavit for partial cancellation of a water right was received from Willma C. Phegley pursuant to OAR 690-380-2320 as follows:

Certificate: 80774 in the name of C L PALMER

Use: IRRIGATION of 18.25 ACRES

Priority Date: DECEMBER 1, 1899

Rate: 0.46 CUBIC FOOT PER SECOND

Limit/Duty: ONE-FORTIETH cfs per acre

Source: POWDER RIVER, tributary to SNAKE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
9S	40E	W.M.	32	SE NE	BAMBURGER DITCH

Authorized Place of Use to be cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	40 E	WM	21	NE SW	12.75
9 S	40 E	WM	21	NW SW	3.2
9 S	40 E	WM	21	SE SW	2.30

6. Affidavits for partial cancellation of a water right were received from various landowners pursuant to 540.610 and are located as follows:

Certificate: 80774 in the name of C L PALMER

Use: IRRIGATION of 12.40 ACRES

Priority Date: DECEMBER 1, 1899

Rate: 0.32 CUBIC FOOT PER SECOND

Limit/Duty: ONE-FORTIETH cfs per acre

Source: POWDER RIVER, tributary to SNAKE RIVER

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	40 E	WM	21	SW NW	2.02
9 S	40 E	WM	21	NW SW	9.28
9 S	40 E	WM	21	SE SW	1.10

7. The locations of the portions of the right under Certificate 80774, as described by Findings of Fact #5 and #6 that are to be cancelled, and those that will remain are as follows:

CERTIFICATE 80774: Matrix of Acres Cancelled and Acres Remaining as a Result of Transfer #T-9780									
C-80774		SWNW	SWNW	NESW	NESW	NWSW	NWSW	SESW	SESW
Tax Lot	Owner	Cancel	Rem Rt.	Cancel	Rem Rt.	Cancel	Rem Rt.	Cancel	Rem Rt.
BC10302	Koenig		0.17						

CERTIFICATE 80774: Matrix of Acres Cancelled and Acres Remaining as a Result of Transfer #T-9780									
C-80774		SWNW	SWNW	NESW	NESW	NWSW	NWSW	SESW	SESW
Tax Lot	Owner	Cancel	Rem Rt.	Cancel	Rem Rt.	Cancel	Rem Rt.	Cancel	Rem Rt.
BC10500	Hanson		0.23						
BC10600	Cline		0.23						
BC10700	Moffit		0.17						
BC10800	Beam		0.50						
BC10900	Beam		0.34						
BC11000	Stout	0.23							
BC11100	Leroue		0.23						
BC11200	Boothby		0.23						
BC11300	Williams						0.23		
BC11400	Williams						0.17		
BC11500	Uyehara	0.17							
BC11600	Housing	1.62				0.01			
BC11700	Chase Morg.		0.20						
BC11800	Thomason					0.20			
BC11900	BV Enter.					0.11			
BC12000	BV. Enter.					0.11			
BC12100	Stiefvater		0.11						
BC12101	Stiefvater		0.23						
BC12200	Davis		0.11						
BC12300	King		0.23						
CA100	Haughland				0.20				
CA200	Baker				1.00				
CA300	Boyle						0.42		
CA301	Rainwater						0.23		
CA400	Phegley			12.75		3.20		0.80	
20DA200	Ellingson					1.23			
CB100	Knapp						0.45		
CB200	Knapp						0.19		
CB300	Ganatra/Carter						2.08		
CB400	Constantine				0.23		2.16		
CB500	Baker City					0.63			
CB600	Henry					0.53			
CB900	Ellingson					0.26			
CB1000	Ellingson					0.72			
CB1100	Ellingson					0.71			
CB1200	Ellingson					3.15			
CB1300	Ellingson					0.42			
CB1400	Ellingson					1.20			
CD300	Phegley							1.50	
CD400	Constantine								1.30
CD500	Woodworth							1.10	
CD501	Bobo				0.23				0.30
CD600	Constantine				0.59				
ROADS	State Hwy						1.79		
TOTAL PER COLUMN:		2.02	2.98	12.75	2.25	12.48	7.72	3.40	1.60

8. The applicant provided sufficient evidence to establish the quantity of water historically used under the supplemental water right.
9. 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.
10. 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.
11. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights are present.
12. The proposed change would not result in enlargement of the rights.
13. The proposed change would not result in injury to other water rights.

Conclusions of Law

The proposed changes in use in application T-9780 are consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000, and the portions of the rights for which affidavits of voluntary cancellation have been submitted shall be cancelled.

Now, therefore, it is ORDERED:

1. The change in character of use proposed in application T-9780 is approved.
2. Water right certificates 34411 and 80774 are cancelled. New certificates will be issued describing those portions of the rights not involved in this transfer or canceled.
3. 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 Certificate 34411 and any related decree.
4. 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.
5. 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.

6. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

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



PCW Phillip C. Ward, Director

Mailing date: MAY 03 2006