

STATE OF OREGON

COUNTY OF BAKER

ORDER APPROVING A CHANGE IN POINT OF DIVERSION
AND PARTIAL CANCELLATION OF A WATER RIGHT

Pursuant to ORS 540.510 to 540.530, after notice was given and no objections were filed, and finding that no injury to existing water rights would result, this order approves, as conditioned or limited herein, TRANSFER 9412 submitted by

KERNS RAINBOW RANCH, INC.
C/O JAN KERNS
45917 QUAIL ROAD
HAINES, OREGON 97833.

The right to be modified, as evidenced by a PORTION of Certificate 80458, was perfected under Permit 410 with a date of priority of AUGUST 22, 1910. The right allows the use of PINE CREEK, a tributary of the POWDER RIVER, for IRRIGATION OF 85.96 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 1.07 cubic feet per second, if available at the authorized point of diversion: SE¼ NE¼, SECTION 26, T 8 S, R 38 E, W.M.; - DRY GULCH DITCH, or its equivalent in case of rotation, measured at the point of diversion from the source.

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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one cubic foot per second per acre or its equivalent for each acre irrigated during the irrigation season of each year.

The use shall conform to any reasonable rotation system ordered by the proper state officer.

The authorized place of use is located as follows:

NW $\frac{1}{4}$ SE $\frac{1}{4}$ 27.73 ACRES
SW $\frac{1}{4}$ SE $\frac{1}{4}$ 19.09 ACRES
SECTION 18

SE $\frac{1}{4}$ NW $\frac{1}{4}$ 39.14 ACRES
SECTION 19
TOWNSHIP 8 SOUTH, RANGE 39 EAST, W.M.

The right to use the water for the above purpose is restricted to beneficial use on the lands or place of use described.

The applicant proposes to change the point of diversion to:

NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 26, T 8 S, R 38 E; WILLIAMS DITCH- 240 FEET SOUTH AND 860 FEET EAST; WELCH DITCH- 390 FEET SOUTH AND 1440 FEET EAST, BOTH FROM THE NW CORNER, SECTION 26.

An affidavit was received from the Commissioners of Baker County, owner of certain land and the water right appurtenant to it. A portion of Certificate 80458 has been abandoned and is requested to be canceled.

The abandoned water right is from PINE CREEK, a tributary of the POWDER RIVER. The date of priority is AUGUST 22, 1910. The abandoned right is for the use of 0.064 cubic foot per second for IRRIGATION OF 5.13 ACRES.

A description of the place of use of the abandoned right is as follows:

NW¼ SE¼ 2.44 ACRES
SW¼ SE¼ 1.83 ACRES
SECTION 18

SE¼ NW¼ 0.86 ACRE
SECTION 19

TOWNSHIP 8 SOUTH, RANGE 39 EAST, W.M.

ORS 540.621 provides: "Whenever the owner of a perfected and developed water right certifies under oath to the Water Resources Commission that the water right has been abandoned by the owner and that the owner desires cancellation thereof, the Commission shall enter an order canceling the water right."

THESE CHANGES TO EXISTING WATER RIGHTS MAY BE MADE PROVIDED THE FOLLOWING CONDITIONS ARE MET BY THE WATER USER:

1. The proposed change shall be completed on or before October 1, 2005.
2. The quantity of water diverted at the new points of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
3. **PRIOR** to the diverting of water at the new points of diversion, 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.
4. Water shall be acquired from the same surface water source as the original point of diversion.
5. The water user **SHALL** install and maintain a fish screen or fish by-pass device. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction and

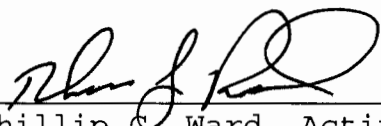
shall be installed under the supervision of the Department of Fish and Wildlife.

The water user may participate in the Oregon Department of Fish and Wildlife's cost sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.

Certificate 80458 is canceled. A new certificate will be issued to confirm that portion of the right NOT involved in this transfer. When satisfactory proof of the completed change is received, a new certificate confirming this water right will be issued.

WITNESS the signature of the Water Resources

Director, affixed AUGUST 9, 2004.


for Phillip C. Ward, Acting Director