

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-10116, Wallowa County) TEMPORARY CHANGES IN POINT
) OF DIVERSION AND PLACE OF USE

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 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

JAMES A SMEJKAL
42142 NW PLACE DRIVE
BANKS OR 97106

Findings of Fact

1. On 3-8-2006, James A Smejkal filed a transfer application to temporarily change the place of use and point of diversion under Certificate 80877 for a period of five years. The Department assigned the application number T-10116. On 3-31-2006, James Smejkal amended transfer application T-10116 to be a change in place of use of 2.7 acres. An additional amendment and revised map related to the location of the authorized point of diversion were received on 5-1-2006.

2. The portion of the right to be transferred is as follows:
Certificate: 80877 in the name of CHAMBERLAIN DITCH CO. (perfected under Permit S-36047)
Use: IRRIGATION of 2.7 ACRES
Priority Date: AUGUST 18, 1971
Rate: 0.06 CUBIC FOOT PER SECOND
Limit/Duty: ONE-FORTIETH cfs per acre, not to exceed 3.5 acre-feet per acre per year
Source: WALLOWA RIVER, tributary to GRANDE RONDE RIVER

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 Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 S	43 E	WM	11	SW SE	1260 FEET NORTH AND 3170 FEET EAST FROM THE SW CORNER OF SECTION 11

Authorized Place of Use:

IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	42 E	WM	8	SE NE	2.7

- A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Application T-10116 proposes to move the authorized point of diversion approximately 13 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
2 S	42 E	WM	31	NE SW	1147 FEET SOUTH AND 662 FEET WEST FROM C1/4 CORNER OF SECTION 31

- Application T-10116 also proposes to change the place of use of the right to:

IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	42 E	WM	31	NW SW	2.7

- 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
- 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.
- A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
- The Oregon Department of Fish and Wildlife has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is currently equipped with an appropriate fish screening and/or by-pass device.
- The proposed change would not result in enlargement of the right.
- 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.

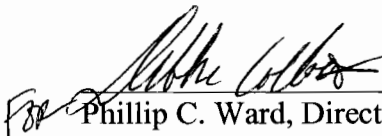
Conclusions of Law

The temporary changes in place of use and point of diversion proposed in application T-10116 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The changes in place of use and point of diversion proposed in application T-10116 are approved.
2. The former place of use **shall not** be irrigated as part of this water right during the 2006, 2007, 2008, 2009 and 2010 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2010 irrigation season. The authorization to use the additional point of diversion shall be terminated concurrently.
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 Certificate 80877 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 Certificate 80877.
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. The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.
9. The use of the remaining water right described by Certificate 80877 shall continue to be in accordance with the terms and conditions of Certificate 80877.

Dated at Salem, Oregon this 17th day of May 2006.


Phillip C. Ward, Director

Mailing Date MAY 23 2006