

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

In the Matter of Transfer Application) AN EMERGENCY USE DROUGHT
T-11641, Baker County) TEMPORARY CHANGE IN PLACE OF
) USE AND POINT OF DIVERSION

Authority

ORS 536.750 establishes the process in which a water right holder may submit a request to temporarily transfer the use, place of use or point of diversion of water in the event of a declaration of drought, without complying with the notice and waiting requirements under ORS 540.520. OAR Chapter 690, Division 019 implements the statutes and provides the Department's procedures and criteria for evaluating drought transfer applications.

Applicant

ALAN AND PAMELA MAXWELL
15177 MUDDY CREEK LANE
HAINES, OR 97833

Findings of Fact

Background

1. On July 19, 2013, ALAN AND PAMELA MAXWELL filed an application to temporarily change the place of use and point of diversion under Certificate 82969 for the remainder of the 2013 irrigation season or the term of the Governor's declared drought, whichever is shorter. The Department assigned the application number T-11641.
2. Notice of the application for transfer was published on July 23, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The applicant did provide Form D, the irrigation district agreement form, but the form was not signed by the manager of the Powder Valley Water Control District.
4. On July 29, 2013, the applicant submitted a signed Form D.
5. The applicants have indicated that portions of Certificate 73411, in the name of Powder Valley Water Control District, are appurtenant to the proposed place of use. Certificate 73411 has been superseded by Certificate 80896.
6. The right to be temporarily transferred is as follows:

This is a final 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 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.

Certificate: 82696 in the name of ALAN MAXWELL (confirmed by Powder River Decree)

Use: IRRIGATION OF 44.7 ACRES

Priority Date: 1868

Rate: 1.12 CUBIC FEET PER SECOND, MEASURED AT THE ORIGINAL POINT OF DIVERSION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	34	NE SW	HUNSTOCK-MEYERS DITCH - 2580 FEET NORTH AND 2600 FEET EAST FROM THE SW CORNER OF SECTION 34

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second.

Source: ROCK CREEK a tributary to the POWDER RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	34	NE SW	HUNSTOCK-MEYERS DITCH - 2580 FEET NORTH AND 2600 FEET EAST FROM THE SW CORNER OF SECTION 34
7 S	38 E	WM	34	NW SW	BROWN-DELONG DITCH - 3567 FEET SOUTH AND 5087 FEET WEST FROM THE NE CORNER OF SECTION 34

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	39 E	WM	7	NW NE	23.0
8 S	39 E	WM	7	SW NE	21.7
Total					44.7

7. Temporary Drought Transfer Application T-11641 proposes to move the authorized points of diversion between approximately 0.7 and 1.3 miles to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	34	NE SW	ROCK CREEK PIPELINE - 2960 FEET SOUTH AND 3040 FEET WEST FROM THE NE CORNER OF SECTION 34
7 S	38 E	WM	34	NW SW	MAXWELL DITCH

8. Temporary Drought Transfer Application T-11641 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	38 E	WM	24	NW NE	1.3
7 S	38 E	WM	24	SW NE	37.1
7 S	38 E	WM	24	SE NW	6.3
Total					44.7

Temporary Transfer Review Criteria

9. Water has been used within the last five years according to the terms and conditions of the right. There is no evidence available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
10. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11641.
11. The Governor issued an executive order on June 23, 2013, declaring a state of drought emergency in Baker County due to drought and extreme weather conditions, which is still in effect and the water right proposed for transfer is on lands included in the area covered by the drought order.
12. Certificate 80896, in the name of Powder Valley Water Control District, is appurtenant to the proposed place of use. The applicant has stated that Certificate 80896 will be diminished to supplemental irrigation during the duration of this transfer.
13. The proposed changes would not result in enlargement of the right.
14. The proposed changes 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 OAR 690-019-055(3) if injury to existing water rights is shown and cannot be mitigated to the satisfaction of the Director and injured parties.

Conclusions of Law


The temporary change in place of use and points of diversion proposed in Temporary Drought Transfer Application T-11641 are consistent with the requirements of ORS 536.750 and OAR 690-019-0055.

Now, therefore, it is ORDERED:

1. The temporary change in place of use and points of diversion proposed in Temporary Drought Transfer Application T-11641 are approved.
2. The former place of use **shall not** be irrigated as part of this water right during the remainder of the 2013 irrigation season or until the end of the Governor's declared drought, whichever occurs first.
3. Certificate 80896 is diminished to supplemental irrigation during the duration of this transfer.
4. The approval of this temporary drought 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 places of use authorized by this transfer shall be in accordance with the terms and conditions of Certificate 82969. The use shall revert to the authorized place of use at the end of the 2013 irrigation season.

6. The approval of this temporary transfer may be revoked or modified if the Department finds the changes cause injury to any existing water right.
7. The proposed change in place of use and points of diversion shall revert to the authorized place of use and points of diversion at the end of the 2013 irrigation season or the end of the Governor's declared drought, whichever occurs first.
8. The use of the remaining water right described by Certificate 82969 shall continue to be in accordance with the terms and conditions of Certificate 82969.

Dated at Salem, Oregon this 1 day of August 2013.



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

Mailing Date: AUG 09 2013