

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-11442, Benton County) TEMPORARY CHANGE IN PLACE OF
) USE AND POINT OF DIVERSION

Authority

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 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

BOYER FAMILY LAND COMPANY
C/O JOE BOYER
PO BOX 373
MONROE, OR 97456

Findings of Fact

1. On July 2, 2012, BOYER FAMILY LAND COMPANY filed an application to temporarily change the place of use and change the point of diversion to serve the proposed place of use under Certificate 32612 for a period of 5 years. The Department assigned the application number T-11442.
2. On July 18, 2012, the applicant amended the application clarifying the proposed place of use.
3. The portion of the right to be temporarily transferred is as follows:

Certificate: 32612 in the name of OWEN KAYSER AND HOWARD BARKER
(perfected under Permit S-27806)
Use: IRRIGATION of 73.5 ACRES
Priority Date: JANUARY 24, 1962
Rate: 0.77 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each

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.

acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: MUDDY CREEK, A TRIBUTARY OF MARY'S AND WILLAMETTE RIVERS

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
14 S	5 W	WM	9	SE NW

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
14 S	5 W	WM	9	NW NE		41	3.0
14 S	5 W	WM	9	NW NE	1		10.2
14 S	5 W	WM	9	SW NE		44	16.8
14 S	5 W	WM	9	SW NE	3		20.0
14 S	5 W	WM	9	SE NE		44	9.0
14 S	5 W	WM	9	NE NW		41	1.8
14 S	5 W	WM	9	SE NW	2		12.7
Total							73.5

4. Certificate 32612 does not identify the location of the point of diversion; however, information is available from the Certified Water Right Examiner that indicates the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	5 W	WM	9	SE NW	1870 FEET SOUTH AND 1730 FEET EAST OF THE NW CORNER OF SECTION 9

5. Temporary Transfer Application T-11442 proposes to temporarily change the place of use of the right to:

IRRIGATION							
Pod I.D.	Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2	14 S	5 W	WM	7	SW SE	34	0.6
2	14 S	5 W	WM	7	SE SE	34	0.6
2	14 S	5 W	WM	18	NE NE	34	4.8
2	14 S	5 W	WM	18	NE NE	53	2.7
2	14 S	5 W	WM	18	NW NE	34	11.6
2	14 S	5 W	WM	18	NW NE	53	8.7
2	14 S	5 W	WM	18	SW NE	53	8.0
2	14 S	5 W	WM	18	SE NE	53	4.2

IRRIGATION							
Pod I.D.	Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
3	14 S	5 W	WM	4	SW SW	41	9.9
3	14 S	5 W	WM	4	SE SW	41	12.4
3	14 S	5 W	WM	9	NE NW	41	3.2
3	14 S	5 W	WM	9	NW NW	41	6.8
Total							73.5

6. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-11442 proposes to move the authorized point of diversion approximately 1.2 miles upstream to POD 2 and approximately 0.45 mile downstream to POD 3, as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	5 W	WM	4	SE SW	POD 3 - 510 FEET NORTH AND 1800 FEET EAST OF THE SW CORNER OF SECTION 4
14 S	5 W	WM	17	NE NW	POD 2 - 520 FEET SOUTH AND 2080 FEET EAST OF THE NW CORNER OF SECTION 17

7. Notice of the application for transfer was published on July 10, 2012 and July 17, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. Temporary Transfer Application T-11442 proposes to temporarily transfer a water right within the boundaries of Greenberry Irrigation District. The district was notified of the proposed temporary transfer and indicated that the district did not object to the transfer.

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 are present.
11. The proposed change would not result in enlargement of the right provided water use under Permit S-54752, in the name of Greenberry Irrigation District, is not exercised at the proposed place of use during the pendency of this temporary transfer.
12. 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(5) 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 to convey water to the temporary place of use proposed in application Temporary Transfer Application T-11442 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The temporary changes in place of use and point of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-11442 is approved.
2. The former place of use **shall not** be irrigated as part of this water right during the 2012, 2013, 2014, 2015 and 2016 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2016 irrigation season. The authorization to use the additional points of diversion shall be terminated concurrently.
4. The approval of this temporary transfer may be revoked or modified if the Department finds the changes cause injury to any existing water right.
5. A subsequent application for permanent transfer of Certificate 32612 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 32612.
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. Water use under Permit S-54752, in the name of Greenberry Irrigation District, shall not be exercised on the proposed place of use during the pendency of this temporary transfer.
9. When required by the Department, the water user shall install, maintain and operate 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 measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
10. The use of the remaining water right described by Certificate 32612 shall continue to be in accordance with the terms and conditions of Certificate 32612.

Dated at Salem, Oregon this 6 day of September, 2012.


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

Mailing Date: Sept. 10, 2012