

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-9838, Umatilla County, Oregon) TEMPORARY CHANGE IN PLACE OF
) USE

ORS 537.705 and 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

Tom Harral
72462 Hwy 395 South
Pendleton, Oregon 97801

Findings of Fact

1. Tom Harral filed an application to temporarily transfer the place of use under Certificates 75552, 75553 and Permit 7400 for a period of five years.. The Department assigned the application number T-9838.
2. The portion of the first right to be transferred is as follows:

Certificate: 75552 in the names of W.F. Zimmerman, R.L. Smith and Harold Bartsch
Use: Irrigation
Priority Date: 1907
Quantity: 0.004 cubic foot per second (cfs)
Rate/Duty: 1/80 cfs per acre subject to the provisions of Paragraph 33 of the Umatilla River Decree
Acres: 0.33
Source: McKay Creek, tributary to the Umatilla River
Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Location
2	N	32	E	W.M.	21	SE NW	2640 Feet South and 2170 Feet East from the NW Corner, Section 21

This is a final order in other than 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:

Township		Range		Meridian	Sec	¼ ¼	Acres
2	N	32	E	W.M.	21	NE SW	0.33

3. Application T-9838 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	Acres
2	N	32	E	W.M.	21	NW SE	0.33

4. The portion of the second right to be transferred is as follows:

Certificate: 75553 in the names of W.F. Zimmerman, R.L. Smith and Harold Bartsch
Use: Irrigation
Priority Date: April 13, 1940
Quantity: 0.013 cfs
Rate/Duty: 1/40 cfs per acre
Acres: 0.67
Source: McKay Creek, tributary to the Umatilla River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Location
2	N	32	E	W.M.	21	SE NW	2640 Feet South and 2170 Feet East from the NW Corner, Section 21

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
2	N	32	E	W.M.	21	NE SW	0.67

5. Application T-9838 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	Acres
2	N	32	E	W.M.	21	NW SE	0.67

6. The portion of the third right to be transferred is as follows:

Permit: 7400 in the name of the Bureau of Reclamation
Use: Supplemental Irrigation
Priority Date: July 1, 1924
Quantity: 4.5 acre-feet
Rate/Duty: 1/40 cfs per acre, not to exceed 4.5 acre-feet per acre
Acres: 1.0
Source: McKay Reservoir, constructed under Permit R-584, tributary to McKay Creek

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Location
2	N	32	E	W.M.	34	NW SE	McKay Dam

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
2	N	32	E	W.M.	21	NE SW	1.0

7. Application T-9838 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	Acres
2	N	32	E	W.M.	21	NW SE	1.0

- 8. 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.
- 9. 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.
- 10. A pump, pipeline, and sprinkler system 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.
- 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(6) if the Department later finds that the transfer is causing injury to any existing water right.

Conclusions of Law

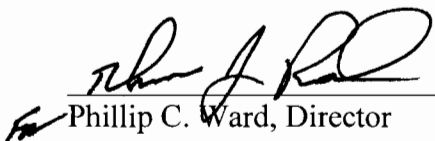
The temporary change in place of use proposed in application T-9838 is consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

- 1. The change in place of use proposed in application T-9838 is approved.
- 2. The former place of use **shall not** be irrigated as part of this water right during the 2005, 2006, 2007, 2008 and 2009 irrigation seasons.
- 3. The use shall revert to the authorized place of use at the end of the 2009 irrigation season.
- 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. 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 76256.

6. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
7. When required by the Department, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water used. 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.
8. The use of the remaining water right described by Certificates 75552, 75553 and Permit 7400 shall continue to be in accordance with the terms and conditions of Certificates 75552, 75553 and Permit 7400.

Dated at Salem, Oregon this 29th day of March, 2005.


Phillip C. Ward, Director

Mailing date: APR 05 2005