

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-9997, Baker County) CHANGE IN CHARACTER OF USE
) AND CANCELLATION OF WATER
) RIGHTS

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use 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

KERNS RAINBOW RANCH, INC
45917 QUAIL RD
HAINES OR 97833

Findings of Fact

1. On August 24, 2005, Kerns Rainbow Ranch filed a transfer application to change the point of diversion to reflect historical use and to change character of use under Certificate 35204, 38015, 38199, 74061, 74063. The Department assigned the application number T-9997.
2. On March 15, 2006, a letter was received from Kerns Rainbow ranch modifying the transfer to request only a character of use change under Certificates 74063 and 38199.
3. The first right to be transferred is as follows:

Certificate: 74063 in the name of TIM AND JAN KERNS (perfected under Permit S-31160)
Use: SUPPLEMENTAL IRRIGATION of 40.0 ACRES
Priority Date: DECEMBER 28, 1965
Rate: 1.0 CUBIC FOOT PER SECOND
Limit/Duty: ONE-FORTIETH cfs per acre, not to exceed 3.5 acre-feet per acre per year
Source: WILLOW CREEK, tributary to POWDER RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
8 S	39 E	WM	7	NW NW	1150 FEET SOUTH & 1020 FEET EAST FROM NW CORNER, SECTION 7

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 Place of Use:

IRRIGATION, LIVESTOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	39 E	WM	7	SE NW	40.0

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

Certificate: 38199 in the name of OLGA WARD and ESTATE OF R.A. WARD, PAUL K. and MARTHA J. JACOBS (perfected under Permit S-33077)

Use: SUPPLEMENTAL IRRIGATION of 39.4 ACRES

Priority Date: NOVEMBER 27, 1967

Rate: 0.38 CUBIC FOOT PER SECOND

Limit/Duty: ONE-FORTIETH cfs per acre, not to exceed 3.5 acre-feet per acre per year

Source: WILLOW CREEK, tributary to POWDER RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
8 S	38* E	WM	7	NW NW	1150 FEET SOUTH & 1020 FEET EAST FROM NW CORNER, SECTION 7

* Certificate 38199 incorrectly states R38E. The range should be 39E, as shown in the Final Proof map.

Authorized Place of Use:

IRRIGATION, LIVESTOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	39 E	WM	7	NE NE	39.4

5. Application T-9997 proposes to change the character of use for Certificates 74063 and 38199 from the Supplemental Irrigation to PRIMARY IRRIGATION.

6. Pursuant to 690-380-2320, affidavits for cancellation of the entire primary water right under Certificate 16882 and a portion of Certificate 38198 appurtenant to the same lands as the rights being transferred were received from landowners Tim and Jan Kerns as follows:

Certificate: 16882 in the name of FLUVIA H. NICOL

Use: IRRIGATION of 40.0 ACRES

Priority Date: SEPTEMBER 14, 1943

Rate: 1.0 CUBIC FOOT PER SECOND

Limit/Duty: ONE-FORTIETH cfs per acre

Source: WASTE WATER FROM COUNTY ROAD, tributary to WILLOW CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
8 S	39 E	WM	7	SE NW

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	39 E	WM	7	SE NW	40.0

Certificate: 38198 in the name of OLGA WARD and ESTATE OF R.A. WARD, PAUL K. and MARTHA J JACOBS

Use: IRRIGATION of 39.4 ACRES

Priority Date: SEPTEMBER 22, 1966

Rate: 0.38 CUBIC FOOT PER SECOND

Limit/Duty: ONE-FORTIETH cfs per acre, not to exceed 3.5 acre-feet per acre per year

Source: DRAIN CONSTRUCTED ON THE PROPERTY OF THE APPLICANTS, tributary to WILLOW CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
8 S	39 E	WM	7	NW NE	320 FEET SOUTH & 3830 FEET EAST FROM NW CORNER, SECTION 7

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	39 E	WM	7	NE NE	39.4

7. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
8. A waiver for the requirement of a CWRE preparing the application map pursuant to 690-380-3410 was granted on April 20, 2006.
9. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are 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 rights are present.
11. The proposed change would not result in enlargement of the rights.
12. The proposed change would not result in injury to other water rights.
13. On June 1, 2006, the Department issued a preliminary determination proposing to approve Transfer T-9997 and mailed a copy to the applicant. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on June 6, 2006, and in the Baker City Herald newspaper on June 14, 21 and 28, 2006 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Conclusions of Law

The proposed change in character of use in application T-9997 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000

Pursuant to ORS 540.621, the portions of developed rights described in Finding of Fact #6 have been abandoned and should be cancelled.

Now, therefore, it is ORDERED:

1. The change in character of use proposed in application T-9997 is approved.
2. The portions of the water rights described in Finding of Fact #6 shall be cancelled due to abandonment.
3. Water right certificate 74063 and 38199 are cancelled. New certificates will be issued describing the portions of the rights not transferred or abandoned.
4. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 74063 and 38199 and any related decree.
5. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2007**. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
6. When required by the Department, 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.
7. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 8th day of August 2006.


Phillip C. Ward, Director *PCW*

Mailing date: Aug 11, 2006