

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

In the Matter of Transfer Application)
T-10399, Baker County)
)
) **FINAL ORDER APPROVING
TEMPORARY CHANGE IN PLACE OF
USE**

Authority

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 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

Delbert Stephens
46226 Rock Creek Town Rd.
Haines, OR 97833

Agent

Peggy Browne
50809 Ellis Rd.
North Powder, OR 97867

Findings of Fact

1. On May 29, 2007, Delbert Stephens filed an application to temporarily change the place of use under Certificates 1458 and 72286 and to temporarily change the place of use and add an additional point of diversion under Certificate 8394 for a period of three years. The Department assigned the application number T-10399.
2. On July 2, 2007, the Department received amendments to the application that clarified the lands affected by this transfer and the proposed term (length) of the temporary transfer application.
3. On July 3, 2007, the Department received a request from the applicant’s agent to remove the request for an additional point of diversion under Certificate 8394.
4. The portion of the first right to be transferred is as follows:

Certificate: 1458 in the name of LAURA A. DODSON (confirmed by North Powder River Decree)
Use: IRRIGATION of 73 ACRES
Priority Date: 1873

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.

Rate: 1.9 CUBIC FEET PER SECOND (cfs) from March 1 – July 1 and 0.91 from July 1 to October 1 of each year

Limit: Total quantity diverted each irrigation season shall not exceed 243 acre-feet

Source: NORTH POWDER RIVER, tributary to POWDER RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
6 S	38 E	WM	32	SW SE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	38 E	WM	35	NE SW	33.0
6 S	38 E	WM	35	SE SW	40.0

5. Application T-10399 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	38 E	WM	33	NW SE	35.0
6 S	38 E	WM	33	NE SE	38.0

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

Certificate: 72286 in the name of RICHARD STEVENS (confirmed by North Powder River Decree)

Use: IRRIGATION of 73 ACRES

Priority Date: DECEMBER 31, 1871

Rate: 1.83 CUBIC FEET PER SECOND (cfs) from March 1 – July 1 and 0.91 cfs from July 1 to October 1 of each year

Source: NORTH POWDER RIVER, tributary to POWDER RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Ditch Name	Survey Coordinates
7 S	38 E	WM	5	NW NE	HUTCHINSON – HILLSIDE DITCH	140 FEET SOUTH AND 2380 FEET WEST FROM THE NE CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	38 E	WM	33	NE SE	37.5
6 S	38 E	WM	33	NW SE	18.6
6 S	38 E	WM	33	SE SE	16.9

7. Application T-10399 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	38 E	WM	35	NE SW	33.0
6 S	38 E	WM	35	SE SW	40.0

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

Certificate: 8394 in the names of CHRIS JOHNSON AND JAMES DALTON (perfected under Permit S-789)

Use: IRRIGATION of 73 ACRES

Priority Date: JULY 24, 1911

Rate: 0.91 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed UNAVAILABLE acre-feet per acre per year

Source: SUMMIT LAKE RESERVOIR, tributary to NORTH POWDER RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec
6 S	39 E	WM	32
6 S	38 E	WM	35

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	39 E	WM	3	NE NW	20.0
7 S	39 E	WM	3	NW NW	40.0
7 S	39 E	WM	4	SW NE	13.0

9. Application T-10399 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	38 E	WM	35	NE SW	33.0
6 S	38 E	WM	35	SE SW	40.0

10. Notice of the application for temporary transfer was published on June 5, 2007, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.

11. Application T-10399 proposes to temporarily transfer water rights within the boundaries of Powder Valley Water Control District. The district was notified of the proposed temporary transfer and did not provide any comments.

12. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

13. A diversion structure, ditch and pipeline sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Application T-10399.

14. The proposed change would not result in enlargement of the rights.

15. 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.

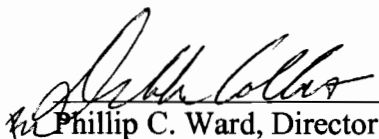
Conclusions of Law

The temporary change in place of use proposed in application T-10399 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 proposed in application T-10399 are approved.
2. The former place of use **shall not** be irrigated as part of this water right during the 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. A subsequent application for permanent transfer of Certificates 1458, 72286 and 8394 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 Certificates 1458, 72286 and 8394.
7. The portions of the water right evidenced by Permit S-50717, appurtenant to the authorized place of use ("from" lands) shall not be exercised during the 2007, 2008 or 2009 irrigation seasons.
8. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
9. The use of the remaining water right described by Certificates 1458, 72286 and 8394 shall continue to be in accordance with the terms and conditions of Certificates 1458, 72286 and 8394.

Dated at Salem, Oregon this 13th day of July 2007.


Phillip C. Ward, Director

Mailing Date: JUL 18 2007