

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

In the Matter of Transfer Application        )        AN EMERGENCY USE DROUGHT  
T-11797, Malheur County                    )        TEMPORARY CHANGE IN PLACE OF  
  )        USE AND CHANGE IN 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**

MARK DEE HARTLEY  
SAMUEL E. HARTLEY  
PO BOX 2551  
NYSSA, OR 97913

**Findings of Fact**

1. On April 22, 2014, MARK DEE HARTLEY AND SAMUEL E. HARTLEY 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 75676 for the remainder of the 2014 irrigation season or the term of the Governor's declared drought, whichever is shorter. The Department assigned the Transfer application number T-11797.
2. Notice of the application for transfer was published on April 29, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 2 and 6, 2014, the Department contacted Nancy Rorick Consulting, by written email correspondence to notify the applicant's agent of the deficiencies in the description of the location of the proposed use in Table 2 of the application. On May 6, 2014, the applicant's agent submitted the items resolving the deficiencies.

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

**Certificate:** 75676 in the name of MARK E. HARTLEY (perfected under decree of the Circuit Court of the State of Oregon for Malheur County)  
**Use:** SUPPLEMENTAL IRRIGATION of 35.8 ACRES

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.

**Priority Date:** 1894

**Limit/Duty:** The use shall not exceed 1.0 acre foot per acre during any calendar month prior to June 1st and 3/4 acre foot per acre during any calendar month after June 1st of each year; and a total not to exceed 3.0 acre feet per acre during the irrigation season from April 1st to October 15th.

**Source:** OWYHEE RIVER within the SNAKE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
21 S	46 E	WM	7	SW SE	160 FEET NORTH AND 2250 FEET WEST FROM THE SE CORNER OF SECTION 7

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
21 S	46 E	WM	7	SW SW		0.9
21 S	46 E	WM	7	SE SW		6.5
21 S	46 E	WM	18	NE NW		24.8
21 S	46 E	WM	18	NW NW	1	3.6

5. Temporary Transfer Application T-11797 proposes to temporarily change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
21 S	45 E	WM	13	NE NE	17.2
21 S	45 E	WM	13	SE NE	18.6

6. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-11797 proposes to move the authorized point of diversion approximately 0.75 mile upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
21 S	46 E	WM	18	SW NW	640 FEET EAST AND 1950 FEET SOUTH FROM THE NW CORNER OF SECTION 18

**Temporary Transfer Review Criteria**

7. 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.
8. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
9. The Governor issued an executive order on February 13, 2014, declaring a state of drought emergency in Malheur 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.

10. The proposed changes would not result in enlargement of the rights.
11. 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**

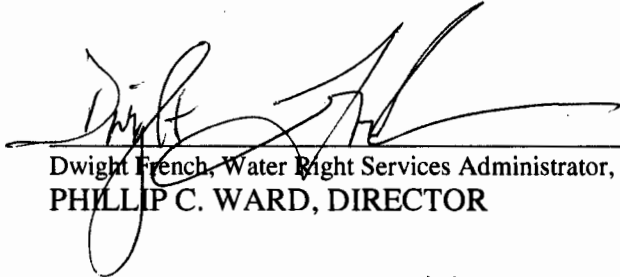
The temporary change in places of use and point of diversion proposed in Temporary Drought Transfer Application T-11797 are consistent with the requirements of ORS 536.750 and OAR 690-019-0055.

### **Now, therefore, it is ORDERED:**

1. The temporary change in places of use and point of diversion proposed in Temporary Drought Transfer Application T-11797 are approved.
2. The former places of use **shall not** be irrigated as part of these water rights during the remainder of the 2014 irrigation season or until the end of the Governor's declared drought, whichever occurs first.
3. 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.
4. 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 75676. The use shall revert to the authorized place of use at the end of the 2014 irrigation season. The authorization to use the temporary point of diversion shall be terminated concurrently.
5. The approval of this temporary transfer may be revoked or modified if the Department finds the changes cause injury to any existing water right.
6. Water use measurement conditions:
  - a. **Before water use may begin** under this order, the water user shall install a flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion (new and existing).
  - b. The water user shall maintain the meters or measuring devices in good working order.
  - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
7. The proposed changes in place of use and point of diversion shall revert to the authorized place of use and point of diversion at the end of the 2014 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 75676 shall continue to be in accordance with the terms and conditions of Certificate 75676.

Dated at Salem, Oregon this 29 day of May, 2014.



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

Mailing Date: MAY 30 2014