

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

In the Matter of Transfer Application)
T-12406, Baker County)
)
)

FINAL ORDER APPROVING
TEMPORARY CHANGES IN PLACE
OF USE

Authority

Oregon Revised Statute (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.

Oregon Administrative Rule (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

Findings of Fact

1. On June 6, 2016, DELBERT STEPHENS filed an application to temporarily change the place of use under Certificates 54727 and 60517 for a period of 5 years. The Department assigned the application number T-12406.
2. Notice of the application for transfer was published on June 14, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The first right to be temporarily transferred is as follows:

Certificate: 54727 in the name of JOSEPHINE J. JENSEN (perfected under Permit S-42037)
Use: SUPPLEMENTAL IRRIGATION of 89.2 ACRES
Priority Date: MARCH 9, 1977
Rate: 1.15 CUBIC FEET PER SECOND, being 0.87 cfs from Little Muddy Creek and 0.28 cfs from Unnamed Slough
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-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.5

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-feet per acre for each acre irrigated during the irrigation season of each year.

Source: LITTLE MUDDY CREEK AND UNNAMED SLOUGH, a tributary of POWDER RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	22	SW NE	LITTLE MUDDY CREEK - 2470 FEET SOUTH AND 2540 FEET WEST FROM NW CORNER, SECTION 23
7 S	38 E	WM	23	NE NW	UNNAMED SLOUGH - 890 FEET SOUTH AND 1400 FEET EAST FROM NW CORNER, SECTION 23

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	38 E	WM	14	SE SW	16.6
7 S	38 E	WM	23	NE NW	36.9
7 S	38 E	WM	23	NW NW	35.7
Total					89.2

4. Temporary Transfer Application T-12406 proposes to temporarily change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	38 E	WM	14	NW NE	32.0
7 S	38 E	WM	14	SW NE	25.2
7 S	38 E	WM	14	NE NW	32.0
Total					89.2

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

Certificate: 60517 in the name of JOSEPHINE J. JENSEN (perfected under Permit S-46385)

Use: SUPPLEMENTAL IRRIGATION of 70.8 ACRES

Priority Date: MARCH 4, 1982

Rate: 1.75 CUBIC FEET 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-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. The right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.

Source: WASTE WATER, a tributary of LITTLE MUDDY CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	22	NW NE	300 FEET SOUTH AND 1970 FEET WEST FROM THE NE CORNER OF SECTION 22

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	38 E	WM	23	NE NW	36.9
7 S	38 E	WM	23	NW NW	33.9
Total					70.8

6. Temporary Transfer Application T-12406 proposes to temporarily change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	38 E	WM	14	SW NE	6.8
7 S	38 E	WM	14	NE SE	32.0
7 S	38 E	WM	14	NW SE	32.0
Total					70.8

7. Temporary Transfer Application T-12406 proposes to temporarily transfer water rights within the boundaries of Powder Valley Water control District. The district was notified of the proposed temporary transfer indicated that the district did not object to the transfer.

Temporary Transfer Review Criteria

8. Water has been used within the last five years according to the terms and conditions of the rights. There is no evidence available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
9. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
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 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 proposed in Temporary Transfer Application T-12406 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 proposed in Temporary Transfer Application T-12406 are approved.

2. The former place of use **shall not** be irrigated as part of these water rights during the 2017, 2018, 2019, 2020 and 2021 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2021 irrigation season.
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 Certificates 54727 and 60517 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 54727 and 60517.
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. The user shall maintain the existing headgate and measuring devices.
9. The use of the remaining water right described by Certificate 60517 shall continue to be in accordance with the terms and conditions of Certificate 60517.

Dated at Salem, Oregon this 20 day of July, 2016.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

JUL 22 2016

Mailing Date: _____