BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-12405, Baker County)	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 1459 and 72286 for a period of 5 years. The Department assigned the application number T-12405.
- 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 portion of the first right to be temporarily transferred is as follows:

Certificate: 1459 in the name of J. L. DODSON (confirmed by decree of the Circuit

Court of the State of Oregon for Union County, Volume 3, at Page 252)

Use: IRRIGATION of 30 ACRES

Priority Date: 1884

Rate: 0.75 CUBIC FEET PER SECOND (CFS) from March 1st to July 1st and

0.38 CFS from July 1st to October 1st of each year; the total quantity diverted during each irrigation season not to exceed 325 acre feet.

Limit/Duty: The amount of water to which such right is entitled and hereby confirmed

for the purpose aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed a rate of flow of 0.75 CUBIC FEET

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.

PER SECOND (CFS) from March 1st to July 1st and 0.38 CFS from July 1st to October 1st of each year; the total quantity diverted during each

irrigation season not to exceed 325 acre feet.

Source:

NORTH POWDER RIVER, a tributary of POWDER RIVER

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	38 E	WM	34	SE NE	30.0

4. Certificate 1459 does not describe the location of the point of diversion, however information is available from the applicant indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q Measured Distances	
7 S	38 E	WM	5	NW NE	140 FEET SOUTH AND 2380 FEET WEST FROM THE NE CORNER OF SECTION 5

5. Temporary Transfer Application T-12405 proposes to temporarily change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	38 E	WM	33	NE SE	10.0
6 S	38 E	WM	33	NW SE	10.0
6 S	38 E	WM	33	SE SE	10.0

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

Certificate:

72286 in the name of RICHARD STEVENS (confirmed by decree of the

Circuit Court of the State of Oregon for Union County, Volume 3, at Page

252)

Use:

IRRIGATION of 30.0 ACRE

Priority Date: 1871

Rate:

0.75 CUBIC FEET PER SECOND

Limit/Duty:

The amount of water entitled and herby confirmed for this right, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.75 cubic feet per second from March

1st to October 1st.

Period of Use: March 1st to October 1st

Source:

NORTH POWDER RIVER, tributary of POWDER RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Q-Q Measured Distances	
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:

Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	38 E	WM	33	NE SE	10.0

Ī	Twp	Rng	Mer	Sec	Q-Q	Acres
f	6 S	38 E	WM	33	NW SE	10.0
Ī	6 S	38 E	WM	33	SE SE	10.0

7. Temporary Transfer Application T-12405 proposes to temporarily change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	38 E	WM	34	SE NE	30.0

8. Temporary Transfer Application T-12405 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 indicated that the district did not object to the transfer.

Temporary Transfer Review Criteria

- 9. 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.
- 10. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights are present.
- 11. The proposed changes would not result in enlargement of the rights.
- 12. 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-12405 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-12405 are approved.
- 2. The former place of use **shall not** be irrigated as part of these water rights during the 2016, 2017, 2018, 2019 and 2020 irrigation seasons.
- 3. The use shall revert to the authorized place of use at the end of the 2020 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 1459 and 72286 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 1459 and 72286.
- 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 water user shall maintain the headgate and measurement devices.
- 9. The use of the remaining water rights described by Certificates 1459 and 72286 shall continue to be in accordance with the terms and conditions of Certificates 1459 and 72286.

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

Wight French, Water Right Services Administrator, for

Thomas M. Byler, Director

Oregon Water Resources Department

Mailing Date: _____'JUL 2 2 2016