# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A
T-11576, Baker County	)	TEMPORARY CHANGE IN PLACE OF
	)	USE

# Authority

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.

OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

# Applicant

**BRAD ALLEN** 48748 MCCARTY BRIDGE RD NORTH POWDER, OR 97867

#### **Findings of Fact**

- 1. On April 15, 2013, BRAD ALLEN, filed an application to temporarily change the place of use under Certificates 4065 and 64148 for a period of 5 years. The Department assigned the application number T-11576.
- 2. Notice of the application for transfer was published on April 23, 2013, 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:

4065 in the name of JOHN C CHRISTENSON; ESTATE, BY JOHN H

INGRAM, EXECUTOR (confirmed by Powder River Decree)

Use:

**IRRIGATION of 122.2 ACRES** 

**Priority Date: 1878** 

Limit/Duty:

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of

ONE-FORTIETH of one cubic foot per second, or its equivalent for each

acre irrigated, during the irrigation season of each year.

Source:

POWDER RIVER within the SNAKE RIVER BASIN

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.

#### **Authorized Points of Diversion**

Ditch Names	
CHRISTEN COLES TONEY	

# **Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	
7 S	39 E	WM	34	NE NW	37.00	
7 S	39 E	WM	34	SE NW	32.00	
7 S	39 E	WM	34	NE SW	31.00	
7 S	39 E	WM	34	SE SW	22.20	
	122.20					

4. Temporary Transfer Application T-11576 proposes to temporarily change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres		
7 S	39 E	WM	13	NE NE	30.55		
7 S	39 E	WM	13	SE NE	30.55		
7 S	40 E	WM	18	NW NW	30.55		
7 S	40 E	WM	18	SW NW	30.55		
	122.20						

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

Certificate: 64148 in the name of FARM CREDIT BANK OF SPOKANE (confirmed

by Powder River Decree)

Use: IRRIGATION of 122.2 ACRES

**Priority Date: 1885** 

Rate: 3.05 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, is limited to a diversion of ONE-FORTIETH of one cubic foot per second, or its equivalent for each

acre irrigated during the irrigation season of each year.

Source: POWDER RIVER within the SNAKE RIVER BASIN

#### **Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances			
7 S	39 E	WM	11	NE SW	1050 FEET SOUTH AND 1290 FEET WEST FROM THE CENTER 1/4 CORNER OF SECTION 11			

#### **Authorized Place of Use:**

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres		
7 S	39 E	WM	13	NE NE	30.55		
7 S	39 E	WM	13	SE NE	30.55		
7 S	40 E	WM	18	NW NW	30.55		
7 S	40 E	WM	18	SW NW	30.55		
	122.2						

6. Temporary Transfer Application T-11576 proposes to temporarily change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres		
. 7 S	39 E	WM	34	NE NW	37.0		
7 S	39 E	WM	34	SE NW	32.0		
7 S	39 E	WM	34	NE SW	31.0		
7 S	39 E	WM	34	SE SW	22.2		
	122.2						

# Temporary Transfer Review Criteria

- 7. 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.
- 8. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights are present.
- 9. The proposed change would not result in enlargement of the rights.
- 10. 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(5) 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 Temporary Transfer Application T-11576 is consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

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

- 1. The temporary change in place of use proposed in Temporary Transfer Application T-11576 is approved.
- 2. Each water right **shall not** irrigate its original place of use during the 2013, 2014, 2015, 2016 and 2017 irrigation seasons.

- 3. The rights shall revert to their authorized places of use at the end of the 2017 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 4065 and 64148 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 4065 and 64148.
- 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 use of the remaining portions of the water rights described by Certificates 4065 and 64148 shall continue to be in accordance with the terms and conditions of Certificates 4065 and 64148.

Dated at Salem, Oregon this 26 day of May, 2013.

Dwight Jench, Water Right Services Administrator, for

PHILLIP C. WARD, DIRECTOR

T-11576.crm

Mailing Date: May 30 2013