

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING AN
T-12109, Baker County	)	EMERGENCY USE DROUGHT
	)	TEMPORARY CHANGE IN PLACE OF
	)	USE

**Authority**

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 019 implements the statutes and provides the Department's procedures and criteria for evaluating drought transfer applications.

**Applicant**

DELBERT STEPHENS  
46226 ROCK CREEK TOWN RD  
HAINES, OR 97833

**Findings of Fact**

1. On July 24, 2015, DELBERT STEPHENS filed an application to temporarily change the place of use under Certificate 54067 for the remainder of the 2015 irrigation season or the term of the Governor's declared drought, whichever is shorter. The Department assigned the application number T-12109.
2. Notice of the application for transfer was published on July 28, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 29, 2015, the Department left a telephone message for the applicant to notify them of a deficiency in the application. A copy of the deed for the land where the right is proposed to be moved from, required by OAR 690-15-060(13), was not provided with the transfer application. On July 31, 2015, Department staff submitted the current recorded deed on behalf of the applicant, resolving the deficiency.
4. The right to be temporarily transferred is as follows:  
**Certificate:** 54067 in the name of FLORENCE L. PETERS (perfected under Permit S-44570)

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.

**Use:** SUPPLEMENTAL IRRIGATION of 187.4 ACRES  
**Priority Date:** APRIL 26, 1979  
**Rate:** 20.00 ACRE FEET STORED WATER ONLY  
**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.  
**Source:** VAN PATTEN LAKE RESERVOIR, constructed under Permit R-132, a tributary of North Powder River

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	37 E	WM	16		RESERVOIR
7 S	38 E	WM	5	NW NE	REDIVERSION: 2760 FEET SOUTH AND 2380 FEET WEST FROM THE E1/4 CORNER OF SECTION 32, T6S, R38E, WM

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	38 E	WM	3	NW NE	39.1
7 S	38 E	WM	3	SW NE	34.7
7 S	38 E	WM	3	NE NW	39.0
7 S	38 E	WM	3	NW NW	24.7
7 S	38 E	WM	3	SW NW	11.1
7 S	38 E	WM	3	SE NW	38.8
Total Acres:					187.4

- Certificate 54067 allows a total of 41.75 acre-feet of stored water. To date, 21.75 acre-feet has been used on the authorized place of use during the 2015 irrigation season. This leaves a total of 20.00 acre-feet available to transfer.
- Certificate 54067 does not state a season of use. Based on the North Powder River Decree, the irrigation season associated with Certificate 54067 is March 1 to October 1.
- Temporary Transfer Application T-12109 proposes to temporarily change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	38 E	WM	33	NE SE	38.0
6 S	38 E	WM	33	NW SE	38.0
6 S	38 E	WM	33	SE SE	15.0
Total Acres:					91.0

8. The supplemental right is being moved from a place of use to which one primary irrigation right is appurtenant (Certificate 38006) to a place of use to which a different primary irrigation right is appurtenant (Certificate 72286). However, the proposed change would not result in enlargement because the availability of water for the two primary right is similar and the transfer will not result in additional use of the supplemental right.
9. Certificate 72886 does not state the duty. Based on the North Powder River Decree the duty is 2.5 acre-feet per acre.

***Temporary Drought Transfer Review Criteria***

10. 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.
11. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-12109.
12. The Governor issued an executive order on April 20, 2015, declaring a state of drought emergency in Baker 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.
13. Consistent with OAR 690-019-0055(1)(b), the total water at the receiving place of use does not exceed the maximum rate and duty for the receiving location. Therefore, to prevent enlargement, the rate and duty shall not exceed one-eightieth cfs and a total of 2.5 acre-feet per acre for the irrigation season.
14. Consistent with OAR 690-380-2240(5), the source for the primary irrigation of the place of use from which the supplemental right is to be moved is similar in reliability to the source of the primary irrigation right of the proposed place of use.
15. The proposed change, as conditioned, would not result in enlargement of the right.
16. 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 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 place of use proposed in Temporary Drought Transfer Application T-12109 is are consistent with the requirements of ORS 536.750 and OAR 690-019-0055.

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

1. The temporary change in place of use proposed in Temporary Drought Transfer Application T-12109 is approved.
2. The former place of use under Certificate 54067 **shall not** be irrigated as part of these water rights during the remainder of the 2015 irrigation season or until the end of the Governor's declared drought, whichever occurs first.
3. The water user shall maintain and operate all existing measurement devices and shall make such improvements as may be required by the Department.
4. The combined use of water under this right and under any other right existing for the same lands shall be limited to one-eightieth cfs and 2.5 acre-feet per acre for each acre irrigated.
5. 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.
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 Certificate 54067.
7. The approval of this temporary transfer may be revoked or modified if the Department finds the change causes injury to any existing water right.
8. The proposed change in place of use shall revert to the authorized place of use at the end of the 2015 irrigation season or the end of the Governor's declared drought, whichever occurs first.

Dated at Salem, Oregon this 4 day of August, 2015.

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

Mailing Date: AUG 07 2015