

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-12055, Baker County)	TEMPORARY CHANGES IN PLACE
)	OF USE AND POINTS OF DIVERSION

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.

Applicants

ALAN AND PAMELA MAXWELL
15177 MUDDY CREEK LANE
HAINES, OR 97833

Findings of Fact

1. On May 8, 2015, ALAN MAXWELL filed an application to temporarily change the place of use and change the points of diversion to serve the proposed place of use under Certificate 82969 and 83774 for a period of 5 years. The Department assigned the application number T-12055.
2. Notice of the application for transfer was published on May 12, 2015, 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: 82969 in the name of ALAN MAXWELL (confirmed by Powder River Decree)
Use: IRRIGATION of 44.7 ACRES
Priority Date: 1868
Rate: 1.12 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.

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.

Source: ROCK CREEK, tributary to POWDER RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	34	NE SW	HUNSTOCK-MEYERS DITCH - 2580 FEET NORTH AND 2600 FEET EAST FROM THE SW CORNER OF SECTION 34
7 S	38 E	WM	34	NW SW	BROWN-DELONG DITCH - 3567 FEET SOUTH AND 5087 FEET WEST FROM THE NE CORNER OF SECTION 34

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	39 E	WM	7	NW NE	23.0
8 S	39 E	WM	7	SW NE	21.7

4. Temporary Transfer Application T-12055 proposes to temporarily change the place of use of Certificate 82969 to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	39 E	WM	18	SW SE	11.7
7 S	39 E	WM	18	SE SE	33.0

5. A change in the points of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-12055 proposes to move the authorized point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Hunstock-Meyers Ditch	Brown-Delong Ditch
7 S	38 E	WM	34	NE SW	NPR-RC PIPELINE - 3040 FEET SOUTH AND 3102 FEET WEST FROM THE NE CORNER OF SECTION 34	370 feet upstream	2,293 feet downstream

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

Certificate: 83774 in the name of POWDER VALLEY WATER CONTROL DISTRICT (confirmed by Powder River Decree)

Use: IRRIGATION of 44.7 ACRES

Priority Date: 1892

Rate: 1.12 CUBIC FEET PER SECOND

Limit/Duty: The amount of water used for irrigation is limited to an amount actually beneficially used for said purpose and shall not exceed a diversion of ONE-FORTIETH of one cubic foot per second per acre, or its equivalent, and shall be subject to all other conditions a limitations contained in said decree.

Source: ROCK, LITTLE MUDDY, AND BIG MUDDY CREEKS tributaries of the POWDER RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	34	NE SW	NPR-RC PIPELINE - 3040 FEET SOUTH AND 3102 FEET WEST FROM THE NE CORNER OF SECTION 34

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	39 E	WM	18	SW SE	11.7
7 S	39 E	WM	18	SE SE	33.0

7. Temporary Transfer Application T-12055 proposes to temporarily change the place of use of Certificate 83774 to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	39 E	WM	7	NW NE	23.0
8 S	39 E	WM	7	SW NE	21.7

8. A change in the points of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-12055 proposes to move the authorized points of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	NPR-RC Pipeline
7 S	38 E	WM	34	NE SW	HUNSTOCK-MEYERS DITCH - 2580 FEET NORTH AND 2600 FEET EAST FROM THE SW CORNER OF SECTION 34	370 feet upstream
7 S	38 E	WM	34	NW SW	BROWN-DELONG DITCH - 3567 FEET SOUTH AND 5087 FEET WEST FROM THE NE CORNER OF SECTION 34	2,293 feet downstream

9. Temporary Transfer Application T-12055 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

10. 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.
11. There are supplemental irrigation water rights, Certificates 68613, 82107, 82108, and 83761, appurtenant to all or a portion of the lands involved in Temporary Transfer T-12055. During the term of the Temporary Transfer use of the supplemental water rights will be suspended.
12. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights are present.

13. The proposed changes would not result in enlargement of the rights.
14. 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 and points of diversion to convey water to the temporary place of use proposed in application Temporary Transfer Application T-12055 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 and points of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-12055 are approved.
2. The former place of use **shall not** be irrigated as part of these water rights during the 2015, 2016, 2017, 2018, and 2019 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2019 irrigation season. The authorization to use the additional points of diversion shall be terminated concurrently.
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 82969 and 83774 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 82969 and 83774.
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 existing headgates and measuring devices as required by the Department.

9. The use of the remaining water rights described by Certificates 82969 and 83774 shall continue to be in accordance with the terms and conditions of Certificates 82969 and 83774.

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



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

Mailing Date: AUG 07 2015