

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

| | | |
|---------------------------------------|---|------------------------------|
| In the Matter of Transfer Application |) | FINAL ORDER APPROVING A |
| T-12742, Grant County |) | TEMPORARY CHANGE IN PLACE OF |
| |) | USE AND POINT 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.

Applicant

RUSSELL YOUNG
PO BOX 171
CANYON CITY, OR 97820

Findings of Fact

1. On September 11, 2017, RUSSELL YOUNG filed an application to temporarily change the place of use and change the point of diversion to serve the proposed place of use under Certificate 28070 and 80556 for a period of 5 years. The Department assigned the application number T-12742.
2. Notice of the application for transfer was published on September 19, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 11, 2018, the Department contacted the agent regarding a deficiency in the application.
4. On January 15, 2018, the Department received amended application pages satisfying the deficiency.

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.

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

Certificate: 28070 in the name of PINE TREE LUMBER CO. (perfected under Permit S-19688)
Use: IRRIGATION of 14.1 ACRES
Priority Date: JUNE 23, 1950
Rate: 0.40 CUBIC FOOT 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 5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: JOHN DAY RIVER a tributary of COLUMBIA RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|--------------------|
| 13 S | 27 E | WM | 5 | SE SW | NONE GIVEN |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 13 S | 27 E | WM | 5 | SE SW | 14.1 |
| Total | | | | | 14.1 |

6. Certificate 28070 does not provide a measured distance for the location of the authorized point of diversion, however the applicant has provided information further describing the location as:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|--|
| 13 S | 27 E | WM | 5 | SE SW | POD 1 - 1310 FEET NORTH AND 2590 FEET EAST FROM THE SW CORNER OF SECTION 5 |

7. Temporary Transfer Application T-12742 proposes to temporarily change the place of use of the right to:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 13 S | 27 E | WM | 5 | NE SW | 3.9 |
| 13 S | 27 E | WM | 5 | NW SW | 4.5 |
| 13 S | 27 E | WM | 6 | SE SE | 5.7 |
| Total | | | | | 14.1 |

8. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-12742 proposes to move the authorized point of diversion approximately 0.41 mile upstream to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|--|
| 13 S | 27 E | WM | 5 | SE SW | POD 2 - 1300 FEET NORTH AND 4800 FEET EAST FROM THE SW CORNER OF SECTION 5 |

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

Certificate: 80556 in the name of STEWART LIVESTOCK COMPANY, INC. BY SARAH STEWART, PRESIDENT (confirmed by decree of the Circuit court of the State of Oregon for GRANT County. The decree is of record at Salem, in the Order Record of the WATER RESOURCES DIRECTOR, in Volume 15, at Page 461.)

Use: IRRIGATION OF 14.1 ACRES, DOMESTIC, AND STOCK

Priority Date: 1870 – TRACT 1

Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually beneficially used and the amount of water used for irrigation together with the amount secured under any other right for the same lands, shall not exceed and is limited to ONE-FORTIETH of one cubic foot per second per acre irrigated from April 1 to September 30; further limited to 1.0 acre-foot per acre per calendar month to July 1 and ¾ acre-foot per acre thereafter; total 5.0 acre-feet per acre for season, measured at points of diversion, or its equivalent in case of rotation, measured at the points of diversion from the source.

Source: JOHN DAY RIVER tributary of the COLUMBIA RIVER

Authorized Point of Diversion:

TRACT 1 - HOME RANCH DITCH

Authorized Place of Use:

| IRRIGATION, DOMESTIC, AND STOCK | | | | | |
|---------------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 13 S | 27 E | WM | 5 | NE SW | 3.9 |
| 13 S | 27 E | WM | 5 | NW SW | 4.5 |
| 13 S | 27 E | WM | 6 | SE SE | 5.7 |
| Total | | | | | 14.1 |

10. Certificate 80556 does not provide any information identifying the location of the authorized point of diversion, however the applicant has provided information further describing the location as:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|---|
| 13 S | 27 E | WM | 5 | SE SW | POD 2 (TRACT 1 – HOME RANCH DITCH) – 1300 FEET NORTH AND 4800 FEET EAST FROM THE SW CORNER OF SECTION 5 |

11. Temporary Transfer Application T-12742 proposes to temporarily change the place of use of the right to:

| IRRIGATION, DOMESTIC, AND STOCK | | | | | |
|---------------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 13 S | 27 E | WM | 5 | SE SW | 14.1 |
| Total | | | | | 14.1 |

12. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-12742 proposes to move the authorized point of diversion approximately 0.41 mile downstream to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|--|
| 13 S | 27 E | WM | 12 | SW NW | POD 1 - 1310 FEET NORTH AND 2590 FEET EAST FROM THE SW CORNER OF SECTION 5 |

Temporary Transfer Review Criteria

13. 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.
14. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
15. The proposed changes would not result in enlargement of the rights.
16. There are no instream water rights within the reach
17. 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 point of diversion to convey water to the temporary place of use proposed in application Temporary Transfer Application T-12742 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 point of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-12742 are approved.
2. The former place of use **shall not** be irrigated as part of these water rights during the 2018, 2019, 2020, 2021 and 2022 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2022 irrigation season. The authorization to use the additional point 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 28070 and 80556 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 28070 and 80556.
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. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install an in-line flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion (new and existing).
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
9. The use of the remaining water right described by Certificates 28070 and 80556 shall continue to be in accordance with the terms and conditions of Certificates 28070 and 80556.

Dated at Salem, Oregon this MAR 08 2018



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

Mailing Date: MAR 09 2018