

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING AN
T-12016, Malheur County)	EMERGENCY USE DROUGHT
)	TEMPORARY CHANGE IN PLACE OF
		USE, AND ADDITIONAL POINT OF
		DIVERSION

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

MARK D. HARTLEY
SAMUEL E. HARTLEY
PO BOX 2551
NYSSA, OR 97913

Findings of Fact

1. On March 27, 2015, MARK D. HARTLEY AND SAMUEL E. HARTLEY filed an application to temporarily change the place of use and add a point of diversion under Certificate 75675 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-12016.
2. Notice of the application for transfer was published on March 31, 2015, pursuant to OAR 690-380-4000. On March 31, the agent notified the Department that certificate 75676 was the water right intended to be transferred.
3. On April 7, 2015, notice of the application for transfer was published for Certificate 75676. No comments were filed in response to the notice.
4. On May 14, 2015, the agent requested, on behalf of the applicant, that temporary transfer application be amended to include an additional point of diversion (POD) 300 yards upstream of the originally proposed POD location.

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 right to be temporarily transferred is as follows:

Certificate: 75676 in the name of MARK E HARTLEY (confirmed by Owyhee River Decree)

Use: SUPPLEMENTAL IRRIGATION of 20.0 ACRES

Priority Date: 1894

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually needed for beneficial use, and shall be subject to all other conditions and limitations contained in said decree. The use shall not exceed 1 acre foot per acre during any calendar month prior to June 1st and ¾ acre foot per acre during any calendar month after June 1st of each year; and a total not to exceed 3.0 acre feet per acre during the irrigation season from April 1 to October 15th.

Source: OWYHEE RIVER, tributary of SNAKE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
21 S	46 E	WM	7	SW SE	160 FEET NORTH AND 2250 FEET WEST FROM THE SE CORNER OF SECTION 7

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
21 S	46 E	WM	7	SW SW		0.9
21 S	46 E	WM	7	SE SW		6.5
21 S	46 E	WM	18	NE NW		7.6
21 S	46 E	WM	18	NW NW	1	5.0

6. Temporary Drought Transfer Application T-12016 proposes additional points of diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance Upstream
21 S	46 E	WM	18	SW NW	640 FEET EAST AND 1950 FEET SOUTH OF THE NW CORNER OF SECTION 18	0.85 mile
21 S	45 E	WM	13	NE SE	920 FEET WEST AND 2895 FEET SOUTH OF THE NE CORNER OF SECTION 13	1.02 miles

7. Temporary Drought Transfer Application T-12016 also proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
21 S	45 E	WM	13	NW NE	6.0
21 S	45 E	WM	13	SW NE	2.5
21 S	45 E	WM	13	SE NE	11.5

Temporary Drought Transfer Review Criteria

8. 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.
9. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
10. The Governor issued an executive order on March 16, 2015, declaring a state of drought emergency in Malheur 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.
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 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, and additional point of diversion proposed in Temporary Drought Transfer Application T-12016 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, and additional point of diversion proposed in Temporary Drought Transfer Application T-12016 is approved.
2. The former places of use **shall not** be irrigated as part of this water right, or remaining primary water right, during the remainder of the 2015 irrigation season or until the end of the Governor's declared drought, whichever occurs first.
3. Water use measurement conditions:
 - a. **Before water use may begin** under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at the new point of diversion.
 - b. The water user shall maintain the meters or measuring devices 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.
4. 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.

5. The use of water at the temporary places of use authorized by this transfer shall be in accordance with the terms and conditions of Certificate 75676. The use shall revert to the authorized place of use at the end of the 2015 irrigation season.
6. The approval of this temporary transfer may be revoked or modified if the Department finds the changes cause injury to any existing water right.
7. The proposed change in place of use, and additional point of diversion shall revert to the authorized place of use and point of diversion at the end of the 2015 irrigation season or the end of the Governor's declared drought, whichever occurs first.
8. The use of the remaining water right described by Certificate 75676 shall continue to be in accordance with the terms and conditions of Certificate 75676.

Dated at Salem, Oregon this 21 day of May, 2015.



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

Mailing Date: MAY 22 2015