# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A
T-11218, Wallowa County	)	CHANGE IN PLACE OF USE

#### **Authority**

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use 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 Agent

ROYCE AND PATRICIA HORTON 68279 ALLEN CANYON LOOP WALLOWA, OR 97885 BAGETT-GRIFFITH & BLACKMAN 2006 ADAMS AVE LAGRANDE, OR 97850

#### Findings of Fact

#### Background

- 1. On March 31, 2011, ROYCE AND PATRICIA HORTON, filed an application to change the place of use under Certificate 65175. The Department assigned the application number T-11218.
- 2. The portion of the right to be transferred is as follows:

**Certificate:** 65175 in the name of ALLEN CANYON SPRINKLER ASSOCIATION

(perfected under Permit S-38052)

Use: SUPPLEMENTAL IRRIGATION of 22.0 ACRES

Priority Date: MAY 7, 1973

**Rate:** 0.51 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, is limited to a diversion of ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.5 acre-feet per acre for each acre irrigated during the irrigation

season of each year.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, 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:** LOSTINE RIVER, tributary to the WALLOWA RIVER

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

Twp	Rng	Mer	Sec	c Q-Q Measured Distances	
1 S	43 E	WM 27 NW SE		NW SE	2870 FEET SOUTH AND 220 FEET EAST FROM
					THE N1/4 CORNER OF SECTION 27

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

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	
1 S	43 E	WM	5	NW SW	22.0	

3. Application T-11218 proposes to change the place of use of the supplemental right to lands with the same underlying primary water right:

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres		
1 S	43 E	WM	5	NW NW	22.0		

- 4. Notice of the application for transfer was published on April 5, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 5. On November 9, 2011, the Department mailed a copy of the Draft Preliminary Determination proposing to approve Transfer Application T-11218 to the applicants. The Draft Preliminary Determination cover letter set forth a deadline of December 9, 2011, for the applicants to respond. The applicant's agent requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
- 6. On January 12, 2012, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11218 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on January 17, 2012, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

## Transfer Review Criteria [OAR 690-380-4010(2)]

- 7. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is 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 right was present within the five-year period prior to submittal of Transfer Application T-11218.
- 9. The proposed change would not result in enlargement of the right.
- 10. The proposed change would not result in injury to other water rights.

#### **Conclusions of Law**

The change in place of use proposed in Transfer Application T-11218 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

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

- 1. The change in place of use proposed in application T-11218 is approved.
- 2. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 65175 and any related decree.
- 3. Water right certificate 65175 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
- 4. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
- 5. The water user shall maintain the existing headgate and shall make such improvements as may be required by the Department.
- 6. The former place of use of the transferred right shall no longer receive water under the right.
- 7. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2013**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.
- 8. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this \_\_\_\_\_\_ day of February, 2012.

Dwight Areneh, Water Right Services Administrator, for PHILLIP C. WARD, DIRECTOR

Mailing date: FEB 2 4 2012