

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

In the Matter of Transfer Application) FINAL ORDER
T-10897, Baker County) APPROVING CHANGES IN POINTS
) OF DIVERSION AND CHANGES 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

Baker Valley Irrigation District
3895 10th St
Baker City, OR 97814

Agent

Thomas Rudolph
20365 Hwy 86
Baker City, OR 97814

Findings of Fact

Background

1. On June 5, 2009, Baker Valley Irrigation District filed an application to change the points of diversion and to change the place of use under Certificates 73587, 73610, 73999 and 80460. The Department assigned the application number T-10897.

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

Certificate: 73587 in the name of Thomas and Karen Rudolph (confirmed by Powder River Decree)

Use: IRRIGATION OF 13.8 ACRES

Priority Date: 1906

Rate: 0.345 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 for each acre irrigated during the irrigation season of each year.

Source: POWDER RIVER, tributary to the SNAKE RIVER

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.

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	40 E	WM	9	SW NW	CORRAL DITCH - 50 FEET NORTH AND 2720 FEET EAST FROM THE C/4 CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	40 E	WM	2	SE NW	13.8

3. Transfer Application T-10897 proposes to move the authorized point of diversion approximately 2 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	40 E	WM	21	NW SW	SETTLERS SLOUGH (POINT 11) - 2160 FEET NORTH AND 30 FEET EAST FROM THE SW CORNER OF SECTION 21

4. Transfer Application T-10897 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
8 S	39 E	WM	14	NE SW	4.0	600/200
8 S	39 E	WM	14	NE SW	2.6	600
8 S	39 E	WM	14	SW SE	7.2	600

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

Certificate: 73610 in the name of U.S. Bureau of Reclamation (perfected under Permit S-32932)

Use: SUPPLEMENTAL IRRIGATION (FROM STORAGE) OF 21.0 ACRES

Priority Date: JUNE 19, 1958

Limit/Duty: 64,400 ACRE-FEET

Source: PHILLIPS LAKE RESERVOIR constructed under PERMIT R-5083, tributary of the Snake River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	38 E	WM	25	NW NE	MASON DAM - 50 FEET SOUTH AND 1500 FEET WEST FROM THE NE CORNER OF SECTION 25

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	40 E	WM	10	SW NE	21.0

6. Transfer Application T-10897 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Redistribution Point
8 S	39 E	WM	14	SW SE	7.2	600	Settlers Slough
9 S	40 E	WM	2	SE NW	13.8	900	Corral Ditch

7. There are a series of redistribution points after water is released from Mason Dam. Below are the descriptions for the redistribution points that pertain to the proposed places of use described in Finding of Fact No. 6. The points of redistribution are:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	40 E	WM	9	SW NW	CORRAL DITCH (POINT 17) - 50 FEET NORTH AND 2720 FEET EAST FROM THE C ¹ / ₄ CORNER OF SECTION 8
9 S	40 E	WM	21	NW SW	SETTLERS SLOUGH (POINT 11) - 2160 FEET NORTH AND 30 FEET EAST FROM THE SW CORNER OF SECTION 21

8. The portion of the third right to be transferred is as follows:

Certificate: 73999 in the name of Baker Valley Irrigation District (perfected under Permit S-50696)

Use: SUPPLEMENTAL IRRIGATION FROM STORAGE OF 30.2 ACRES

Priority Date: APRIL 26, 1982

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 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 3.5 ACRE-FEET for each acre irrigated during the irrigation season of each year from direct flow and storage from Mason Reservoir constructed under permit R-5083. The use of natural flow is limited to the period of March 1st through July 30 of each year.

Source: MASON RESERVOIR CONSTRUCTED UNDER APPLICATION R-31037, PERMIT R-5083, tributary of the SNAKE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	38 E	WM	25	NW NE	MASON DAM - 50 FEET SOUTH AND 1500 FEET WEST FROM THE NE CORNER OF SECTION 25

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	40 E	WM	2	SE NW	13.8
9 S	40 E	WM	10	SE NE	16.4

9. Transfer Application T-10897 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	39 E	WM	14	NE SW	4.0
8 S	39 E	WM	14	NW SE	8.5
8 S	39 E	WM	14	SW SE	17.7

10. There are a series of redistribution points after water is released from Mason Dam. Below is the description for the redistribution point that pertains to the proposed place of use described in Finding of Fact No. 9. The point of redistribution is:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	40 E	WM	21	NW SW	SETTLERS SLOUGH (POINT 11) - 2160 FEET NORTH AND 30 FEET EAST FROM THE SW CORNER OF SECTION 21

11. The portion of the fourth right to be transferred is as follows:

Certificate: 80460 in the name of Baker Valley Irrigation District (confirmed by Powder River Decree)

Use: IRRIGATION OF 40.0 ACRES

Priority Date: MARCH, 1905

Rate: 1.0 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 ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated during the irrigation season of each year.

Source: POWDER RIVER, tributary to the SNAKE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	40 E	WM	19	NW NE	SMITH DITCH (POINT 6) - 945 FEET SOUTH AND 1865 FEET WEST FROM THE NE CORNER OF SECTION 19

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	40 E	WM	10	SE NE	40.0

12. Transfer Application T-10897 proposes to move the authorized point of diversion approximately 7.5 miles downstream to the Corral Ditch and 5.5 miles downstream to Settlers Slough Ditch (described below):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	40 E	WM	9	SW NW	CORRAL DITCH (POINT 17) - 50 FEET NORTH AND 2720 FEET EAST FROM THE C¼ CORNER OF SECTION 8
9 S	40 E	WM	21	NW SW	SETTLERS SLOUGH (POINT 11) - 2160 FEET NORTH AND 30 FEET EAST FROM THE SW CORNER OF SECTION 21

13. Transfer Application T-10897 also proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Points of diversion
8 S	39 E	WM	14	NW SE	8.5	200	SETTLERS SLOUGH
8 S	39 E	WM	14	NW SE	17.7	600	SETTLERS SLOUGH
9 S	40 E	WM	2	SE NW	13.8	900	CORRAL DITCH

14. There is an underlying groundwater Permit G-16347 (Application G-16941) that is within the place of use listed under Finding of Fact Number 11. The application requested that the permit be issued for Primary Irrigation Use. The use was diminished to Supplemental Irrigation until such time that the transfer of the conflicting surface water right is approved. The claim of beneficial use report for permit G-16347 can then be proved up as Primary Irrigation Use after the surface water right is transferred.
15. Notice of the application for transfer was published on June 30, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
16. On October 23, 2009, the Department mailed a copy of the Preliminary Determination proposing to approve Transfer Application T-10897 to the applicant and agent. The Preliminary Determination cover letter set forth a deadline of November 23, 2009, for the applicant/agent to respond. On November 9, 2009 the agent requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
17. On November 23, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T- 10897 and mailed a copy to the applicant and agent. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department’s weekly notice on December 1, 2009, and in the Record-Courier newspaper on November 26, December 3, and 10, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

18. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device may be required in the future at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device.

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

19. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
20. Diversion structure and ditches sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-10897.
21. The proposed change(s) would not result in enlargement of the rights.
22. The proposed change(s) would not result in injury to other water rights.

Conclusions of Law

The change in points of diversion and changes in place of use proposed in Transfer Application T-10897 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in points of diversion and places of use proposed in Transfer Application T-10897 are 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 Certificates 73587, 73610, 73999, 80460, and any related decree.
3. Water Right Certificates 73587 and 80460 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.
4. Water Right Certificates 73610 and 73999 are modified. The Department will issue superseding certificates describing the rights when the Department determines that new certificates are necessary for record keeping.
5. The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.
6. The existing measurement device shall be maintained in operable condition.

7. The existing headgate shall be maintained and such improvements shall be made should they be required by the Department.
8. Within one year after receiving written notification from the Oregon Department of Fish and Wildlife (ODFW) that a fish screening and/or by-pass device is required, the water user shall install a screening and/or by-pass device, as appropriate, at the new point of diversion. The fish screening and/or by-pass device must meet ODFW's design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screening and/or by-pass device meets ODFW's criteria. Once installed the water user shall maintain and operate the fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
9. The former place of use of the transferred rights shall no longer receive water under the rights.
10. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
11. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 15th day of January 2010.


for Phillip C. Ward, Director

Mailing Date: JAN 22 2010