

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

| | | |
|---------------------------------------|---|------------------------------------|
| In the Matter of Transfer Application |) | FINAL ORDER APPROVING AN |
| T-13725, Baker County |) | EMERGENCY USE DROUGHT TEMPORARY |
| |) | CHANGE IN PLACES OF USE AND CHANGE |
| |) | IN 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

DELBERT STEPHENS
46226 ROCK CREEK TOWN RD
HAINES, OR 97833

Findings of Fact

1. On June 1, 2021, DELBERT STEPHENS filed an application to temporarily change the place of use under Certificate 72286, and to change the place of use and change the point of diversion under Certificate 73998 for the remainder of the 2021 irrigation season or the term of the Governor's declared drought, whichever is shorter. The Department assigned the application number T-13725.
2. Notice of the application for transfer was published on June 8, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The portion of the first right to be temporarily transferred is as follows:
Certificate: 72286 in the name of RICHARD STEVENS (confirmed by NORTH POWDER RIVER Decree)
Use: STOCK AND IRRIGATION of 83.8 ACRES
Priority Date: 1871 for stock and irrigation of 83.8 acres

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.

Rate: 2.1 CUBIC FEET PER SECOND (CFS), BEING 2.1 CFS OF 1871 FROM MARCH 1ST TO JULY 1ST, AND SHALL NOT EXCEED 1.05 CFS FROM JULY 1ST TO OCTOBER 1ST

Source: NORTH POWDER RIVER, tributary of POWDER RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|---|
| 7 S | 38 E | WM | 5 | NW NE | HUTCHINSON HILLSIDE DITCH - 140 FEET SOUTH AND 2380 FEET WEST FROM THE NE CORNER OF SECTION 5 |

Authorized Place of Use:

| STOCK and IRRIGATION | | | | | |
|----------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 6 S | 38 E | WM | 33 | NE SE | 37.5 |
| 6 S | 38 E | WM | 33 | NW SE | 18.6 |
| 6 S | 38 E | WM | 33 | SE SE | 27.7 |
| Total | | | | | 83.8 |

4. Temporary Transfer Application T-13725 proposes to temporarily change the place of use of the right to:

| STOCK and IRRIGATION | | | | | |
|----------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 7 S | 38 E | WM | 11 | SW NE | 7.7 |
| 7 S | 38 E | WM | 11 | NE NW | 37.0 |
| 7 S | 38 E | WM | 11 | SE NW | 39.1 |
| Total | | | | | 83.8 |

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

Certificate: 73998 in the name of WILLIAM AND LORENE DYKE (confirmed by NORTH POWDER RIVER Decree)

Use: IRRIGATION of 83.8 ACRES

Priority Date: 1879

Rate: 1.0 CUBIC FOOT PER SECOND FOR THE 1879 PRIORITY FROM MARCH 1ST TO JULY 1ST, AND 1.0 CUBIC FOOT PER SECOND FOR THE 1879 PRIORITY FROM JULY 1ST TO OCTOBER 1ST

Source: NORTH POWDER RIVER, a tributary of POWDER RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|---|
| 7 S | 38 E | WM | 18 | SW SE | BULGER DITCH - 730 FEET NORTH AND 1370 FEET WEST FROM THE SE CORNER OF SECTION 18 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 7 S | 38 E | WM | 11 | SW NE | 7.7 |
| 7 S | 38 E | WM | 11 | NE NW | 37.0 |

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 7 S | 38 E | WM | 11 | SE NW | 39.1 |
| Total | | | | | 83.8 |

6. Temporary Transfer Application T-13725 proposes to temporarily change the place of use of the right to:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 6 S | 38 E | WM | 33 | NE SE | 37.5 |
| 6 S | 38 E | WM | 33 | NW SE | 18.6 |
| 6 S | 38 E | WM | 33 | SE SE | 27.7 |

7. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13725 proposes to move the authorized point of diversion approximately 3.4 miles downstream to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|--|
| 7 S | 38 E | WM | 5 | NW NE | HH - 140 FEET SOUTH AND 2380 FEET WEST FROM THE NE CORNER OF SECTION 5 |

Temporary Drought Transfer Review Criteria

8. 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.
9. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
10. The Governor issued an executive order on May 10, 2021, declaring a state of drought emergency in Baker 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.

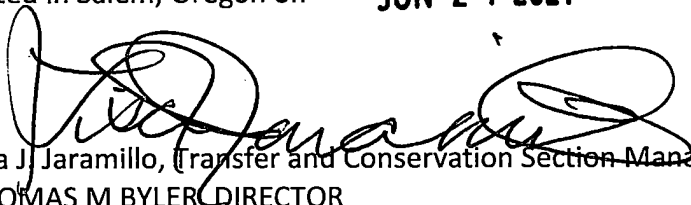
Conclusions of Law

The temporary change in places of use and point of diversion proposed in Temporary Drought Transfer Application T-13725 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 places of use and point of diversion proposed in Temporary Drought Transfer Application T-13725 is approved.
2. The former places of use **shall not** be irrigated as part of these water rights during the remainder of the 2021 irrigation season or until the end of the Governor's declared drought, whichever occurs first.
3. 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.
4. The use of water at the temporary places of use authorized by this transfer shall be in accordance with the terms and conditions of Certificates 72286 and 73998. The use shall revert to the authorized places of use at the end of the 2021 irrigation season.
5. The proposed change in places of use and point of diversion shall revert to the authorized places of use and point of diversion at the end of the 2021 irrigation season or the end of the Governor's declared drought, whichever occurs first.
6. The use of the remaining water rights described by Certificates 72286 and 73998 shall continue to be in accordance with the terms and conditions of Certificates 72286 and 73998.

Dated in Salem, Oregon on **JUN 24 2021**



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

Mailing Date: **JUN 25 2021**