

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-11597, Baker County)	TEMPORARY CHANGES IN PLACE
)	OF USE AND POINTS OF DIVERSION

Authority

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.

OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

TOM AND FAWN KERNS
13974 LAUNCHPAD LN
HAINES, OR 97833

Findings of Fact

1. On May 13, 2013, ANDY DELONG filed an application to temporarily change the place of use and change the points of diversion to serve the proposed place of use under Certificates 45595 and 87961 for a period of 5 years. The Department assigned the application number T-11597.
2. Notice of the application for transfer was published on May 21, 2013, 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: 45595 in the name of ANDY DELONG (confirmed by Powder River Decree)
Use: IRRIGATION of 33.0 ACRES
Priority Date: 1868
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 during the irrigation season of each year.

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.

Source: ROCK CREEK, tributary to the POWDER RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	38 E	WM	34	NW SE	32.0
7 S	38 E	WM	34	SE SE	1.0

4. Certificate 45595 does not describe the location of the point of diversion, however information is available from the transfer application and application map which indicates that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	34	NW SW	BROWN-DELONG: 1790 FEET NORTH AND 230 FEET EAST FROM THE SW CORNER OF SECTION 34.

5. Temporary Transfer Application T-11597 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	38 E	WM	34	SW SE	10.0
7 S	38 E	WM	34	SE SE	23.0

6. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-11597 proposes to move the authorized point of diversion approximately 700 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	33	NE SE	McCULLOUGH: 1670 FEET NORTH AND 200 FEET WEST FROM THE SE CORNER OF SECTION 33

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

Certificate: 87961 in the name of PEARL L. STEWARD (confirmed by Powder River Decree)

Use: IRRIGATION of 33.0 ACRES

Priority Date: 1882 for 23.0 ACRES AND 1904 FOR 10.0 ACRES

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 during the irrigation season of each year.

Source: ROCK CREEK, tributary to the POWDER RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Priority Date	Measured Distances
7 S	38 E	WM	33	NE SE	1882	McCULLOUGH: 1670 FEET NORTH AND 200 FEET WEST FROM SE CORNER OF SECTION 33
7 S	38 E	WM	33	NW SE	1904	WILCOX: 1580 FEET NORTH AND 1430 FEET WEST FROM SE CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Priority
7 S	38 E	WM	34	SW SE	10.0	1904
7 S	38 E	WM	34	SE SE	23.0	1882

8. Temporary Transfer Application T-11597 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Priority
7 S	38 E	WM	34	NW SE	22.0	1882
7 S	38 E	WM	34	NW SE	10.0	1904
7 S	38 E	WM	34	SE SE	1.0	1882

9. A change in points of diversion is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-11597 proposes to move the authorized points of diversion approximately 700 feet downstream from the authorized (McCullough POD) and approximately 1650 feet downstream from the authorized (Wilcox POD) to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	34	NW SW	BROWN-DELONG: 1790 FEET NORTH AND 230 FEET EAST FROM THE SW CORNER OF SECTION 34.

Temporary Transfer Review Criteria

10. 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.
11. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights are present.
12. The proposed changes would not result in enlargement of the rights.
13. 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 points of diversion to convey water to the temporary place of use proposed in application Temporary Transfer Application T-11597 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 points of diversion to convey water to the temporary place of use proposed in Temporary Transfer Application T-11597 are approved.
2. The former place of use **shall not** be irrigated by the "transferred off" water rights during the 2013, 2014, 2015, 2016 and 2017 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2017 irrigation season. The authorization to use the proposed points 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 45595 and 87961 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 45595 and 87961.
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. The use of the remaining water rights described by Certificates 45595 and 87961 shall continue to be in accordance with the terms and conditions of Certificates 45595 and 87961.

Dated at Salem, Oregon this 28 day of June, 2013.



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

Mailing Date: JUL 02 2013