

**Before the Water Resources Director  
Baker County**

**FINAL ORDER**

Pursuant to ORS 541.327, a petition requesting approval and acceptance of an individual co-petitioner's map within the boundaries of a qualifying organization showing the present location and use of water rights within the petitioned area was submitted to the Oregon Water Resources Department on June 17, 1993, by Powder Valley Water Control District. Subsequently, portions of the original petition were separated into individual petition requests pursuant to ORS 541.327. This order addresses that portion petitioned by the individual co-petitioner:

**Tim and Janice Kerns  
Rt. 1 Box 30 A  
Haines, OR 97833**

The Rights to be modified are all or portions of certificates 37670, 52845, 52846, 52847, 52917, and 67791 of the State record of Water Right Certificates, and Special Order Volume 46, Page 473 (T-6185). These rights allow use of the waters of Sump #1 and drain tile, Sump #2, and a well, tributary to Willow Creek and Rock Creek and Willow Creek, tributary to Powder River, for the irrigation and supplemental irrigation of 984.51 acres.

The affected portion of the rights to be modified are listed below in **Table 1**.

**Table 1**  
**Rights to be modified by this order**

| <b>Certificate Number</b>     | <b>Priority</b> | <b>Township South</b> | <b>Range East</b> | <b>Section</b> | <b>Quarter Quarter</b> | <b>Use</b> | <b>Acres</b>  | <b>Source</b> |
|-------------------------------|-----------------|-----------------------|-------------------|----------------|------------------------|------------|---------------|---------------|
| 37670                         | 12/28/1965      | 8                     | 39                | 7              | NENW                   | IS         | 6.00          | Willow Cr.    |
| T-6185                        | 1868            | 8                     | 39                | 6              | SWSW                   | IR         | 40.00         | Rock Cr.      |
| T-6185                        | 1/20/1868       | 8                     | 38                | 1              | SWSE                   | IR         | 30.50         | Rock Cr.      |
| T-6185                        | 1/20/1868       | 8                     | 38                | 12             | NWNE                   | IR         | 30.50         | Rock Cr.      |
| T-6185                        | 1/20/1868       | 8                     | 38                | 12             | NWNW                   | IR         | 25.00         | Rock Cr.      |
| 52845                         | 7/21/1977       | 8                     | 38                | 1              | SEnw                   | IS         | 40.00         | a well        |
| 52845                         | 7/21/1977       | 8                     | 38                | 1              | SWSW                   | IS         | 2.50          | a well        |
| 52846                         | 7/21/1977       | 8                     | 38                | 1              | SEnw                   | IS         | 40.00         | Sump #1       |
| 52846                         | 7/21/1977       | 8                     | 38                | 1              | SWSW                   | IS         | 2.50          | Sump #1       |
| 52847                         | 7/21/1977       | 8                     | 38                | 1              | SEnw                   | IS         | 40.00         | Sump #2       |
| 52847                         | 7/21/1977       | 8                     | 38                | 1              | SWSW                   | IS         | 2.50          | Sump #2       |
| 52917                         | 1/20/1868       | 8                     | 38                | 1              | SEnw                   | IR         | 40.00         | Rock Cr.      |
| 67791                         | 1868            | 8                     | 38                | 1              | SESW                   | IR         | 40.00         | Rock Cr.      |
| 67791                         | 1868            | 8                     | 38                | 1              | SWNW                   | IR         | 40.00         | Rock Cr.      |
| 67791                         | 1868            | 8                     | 38                | 1              | SWSW                   | IR         | 13.80         | Rock Cr.      |
| <b>Total Acres Available:</b> |                 |                       |                   |                |                        |            | <b>393.30</b> |               |

*IR = Irrigation, IS = Supplemental Irrigation*

The petitioner requests certificates confirming the present place of use and uses listed below in **Table 2**.

**TABLE 2**  
**Requested Location and Use (the Petition)**

| Certificate Number                          | Priority Date | Township South | Range East | Section | Quarter Quarter | Acres        | Use | Source               | Ditch                         |
|---|---------------|----------------|------------|---------|-----------------|--------------|-----|----------------------|-------------------------------|
| 37670                                       | 12/28/1965    | 8              | 39         | 7       | NENW            | 5.7          | IS  | Willow Cr.           | Pump in Willow Cr.            |
| T-6185                                      | 1868          | 8              | 39         | 6       | SWSW            | 34.3         | IR  | Rock Cr.             | Hunstock-Meyers, Brown Delong |
| T-6185                                      | 1868          | 8              | 39         | 7       | NENW            | 5.7          | IR  | Rock Cr.             | Hunstock-Meyers, Brown Delong |
| T-6185                                      | 1/20/1868     | 8              | 38         | 1       | SWSE            | 4.6          | IR  | Rock Cr.             | Hunstock-Meyers, Brown Delong |
| T-6185                                      | 1/20/1868     | 8              | 38         | 1       | SWSE            | 30.5         | IR  | Rock Cr.             | Hunstock-Meyers, Brown Delong |
| T-6185                                      | 1/20/1868     | 8              | 38         | 1       | SWSW            | 3.6          | IR  | Rock Cr.             | Hunstock-Meyers, Brown Delong |
| T-6185                                      | 1/20/1868     | 8              | 38         | 12      | NWNW            | 16.4         | IR  | Rock Cr.             | Hunstock-Meyers, Brown Delong |
| T-6185                                      | 1/20/1868     | 8              | 38         | 12      | NWNE            | 0.4          | IR  | Rock Cr.             | Hunstock-Meyers, Brown Delong |
| T-6185                                      | 1/20/1868     | 8              | 38         | 12      | NWNE            | 30.5         | IR  | Rock Cr.             | Hunstock-Meyers, Brown Delong |
| 52845                                       | 7/21/1977     | 8              | 38         | 1       | SWSW            | 2.1          | IS  | a well               |                               |
| 52845                                       | 7/21/1977     | 8              | 38         | 1       | SEnw            | 37.9         | IS  | a well               |                               |
| 52845                                       | 7/21/1977     | 8              | 38         | 1       | SWSW            | 2.5          | IS  | a well               |                               |
| 52846                                       | 7/21/1977     | 8              | 38         | 1       | SWSW            | 2.1          | IS  | Sump #1 & drain tile |                               |
| 52846                                       | 7/21/1977     | 8              | 38         | 1       | SWSW            | 2.5          | IS  | Sump #1 & drain tile |                               |
| 52846                                       | 7/21/1977     | 8              | 38         | 1       | SEnw            | 37.9         | IS  | Sump #1 & drain tile |                               |
| 52847                                       | 7/21/1977     | 8              | 38         | 1       | SWSW            | 2.5          | IS  | Sump #2              |                               |
| 52847                                       | 7/21/1977     | 8              | 38         | 1       | SEnw            | 37.9         | IS  | Sump #2              |                               |
| 52847                                       | 7/21/1977     | 8              | 38         | 1       | SWSW            | 2.1          | IS  | Sump #2              |                               |
| 52917                                       | 1/20/68       | 8              | 38         | 1       | SWSW            | 2.1          | IR  | Rock Cr.             | Brown Delong                  |
| 52917                                       | 1/20/68       | 8              | 38         | 1       | SEnw            | 37.9         | IR  | Rock Cr.             | Brown Delong                  |
| 67791                                       | 1868          | 8              | 38         | 1       | SWNW            | 32.3         | IR  | Rock Cr.             | Brown Delong                  |
| 67791                                       | 1868          | 8              | 38         | 12      | NWNE            | 9.1          | IR  | Rock Cr.             | Brown Delong                  |
| 67791                                       | 1868          | 8              | 38         | 1       | SESW            | 38.6         | IR  | Rock Cr.             | Brown Delong                  |
| 67791                                       | 1868          | 8              | 38         | 1       | SWSW            | 13.8         | IR  | Rock Cr.             | Brown Delong                  |
| <b>Total Primary Acres Petitioned:</b>      |               |                |            |         |                 | <b>259.8</b> |     |                      |                               |
| <b>Total Supplemental Acres Petitioned:</b> |               |                |            |         |                 | <b>133.2</b> |     |                      |                               |

*IR = Irrigation, IS = Supplemental Irrigation*

The petitioner requests that the following acres (**Table 3**) be cancelled:

**Table 3**  
**Canceled Acres**

| Certificate                   | Priority Date | Source       | Canceled Acres | Sec | Twp(S) | Rng(E) | ¼ ¼  |
|-------------------------------|---------------|--------------|----------------|-----|--------|--------|------|
| 37670                         | 12/28/1965    | Willow Creek | 0.30           | 7   | 8      | 39     | NENW |
| <b>Total Canceled Acreage</b> |               |              | 0.30           |     |        |        |      |

**The points of diversion and appropriation for petitioned areas are described and located as follows:**

1. **Brown-Delong Ditch from Rock Creek** - NW¼ SW¼, Section 34, Township 7 South, Range 38 East, W.M.; 3567 feet South and 5087 feet West from Northeast corner of said Section 34.
2. **Hunstock-Meyers Ditch From Rock Creek**- NE¼ SW¼, Section 34, Township 7 South, Range 38 East, W.M.; 2663 feet South and 2687 feet West from Northeast corner of said Section 34.
3. **Brown Ditch from Willow Creek** - SW¼ NE¼, Section 2, Township 8 South, Range 38 East, W.M.; 60 feet North and 1600 feet West from the East quarter corner of said Section 2.
4. **A well** - NW¼ SE¼, Section 2, Township 8 South, Range 38 East, W.M.; 60 feet South and 1600 feet West from East quarter corner of said Section 2.
5. **Sump #1 and drain tile** - SW¼ NE¼, Section 2, Township 8 South, Range 38 East, W.M.; 60 feet North and 1600 feet West from the East quarter corner of said Section 2.
6. **Sump #2** - SW¼SW¼, Section 1, Township 8 South, Range 38 East, W.M.; 900 feet North and 1300 feet East from the Southwest corner of said Section 1.
7. **A pump from Willow Cr..** - NW¼ NW¼, Section 7, Township 8 South, Range 39 East, W.M.; 1150 feet South and 1020 feet East from Northwest corner of said Section 7.

## FINDINGS

The Director has examined the co-petition and map of Tim & Janice Kerns, and the Report of Findings prepared by Department staff. The petition and the Report of Findings are on file at the Water Resources Department. Based on the examination and report, the Director finds:

1. Tim & Janice Kerns filed an individual co-petition and map in a timely manner, as required by ORS 541.327.
2. Tim & Janice Kerns is an individual co-petitioner within the service boundaries of the Powder Valley Water Control District. The petitioned lands are served by Brown Delong Ditch, formed prior to 1917, and is a qualifying organization as defined in ORS 541.325.
3. The content and quality of the Tim & Janice Kerns petition and map meet the requirements of ORS 541.329.
4. The acreage petitioned is within the limits of the eligible water rights and the limits set in ORS 541.331(4).
5. Tim & Janice Kerns have met the notice requirements of ORS 541.329(5).
6. The proposed changes may be made without injury to existing water rights.
7. No new points of diversion were created as a result of this petition.
8. The original irrigation season, rate, duty and all other conditions and limitations contained in the original water rights shall remain in effect for all rights petitioned.
9. Tim & Janice Kerns have met the requirements of ORS 541.325 to 541.333 for issuance of new certificates confirming the present use and place of use of the petitioned water rights.
10. The proposed changes were published as required under 690-13-310.
11. No comments identifying injury or protests were filed against the approval of the petition.
12. Transfer 6185 has been completed and confirming certificates should be issued for that portion of Transfer 6185 that is not petitioned.

13. Tim and Janice Kerns have requested the cancellation of 0.3 acre of supplemental irrigation within the NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , Section 7, Township 8 South, Range 39 East, W.M.
14. Certificate 67791 contains errors as alleged by the petitioner. These errors are as follows:
  - ▶ 100 acres of supplemental irrigation from Rock Creek with a priority date of 1868 was inadvertently omitted.
  - ▶ A priority date of 1858 was erroneously given to 173.8 acres of primary irrigation from Rock Creek with an actual priority of 1868.
15. The petitioner has requested clarification of certificate 67791 to determine the location of the correct priority dates on the certificate in relation to all of the lands and sources.

THEREFORE, it is hereby **ORDERED**:

1. The petition and map submitted by Tim & Janice Kerns are accepted and approved.
2. Certificates 37670, 52845, 52846, 52847, 52917, and 67791 are canceled.
3. Certificates confirming the present type of use and place of use of water rights, as listed in **TABLE 2**, shall be issued.
4. Remaining right certificates shall be issued for those portions of certificates 37670, 52845, 52846, and 52847 not modified by this order or modified by other orders approving petitions pursuant to ORS 541.329.
5. A certificate shall be issued to clarify and correct Certificate 67791 that describes that portion of prior Certificate 4029 not modified by Special Order Volume 30, Page 496-497 approving Transfer 3868, Special Order Volume 46, Pages 473-475 approving Transfer 6185, Special Order Volume 46, Pages 476-477 approving Transfer 6186, or this order.
6. A confirming certificate shall be issued for the portion of Transfer 6185 that is not petitioned.

7. 0.3 acre of supplemental irrigation within the NE  $\frac{1}{4}$  NW  $\frac{1}{4}$ , Section 7, Township 8 South, Range 39 East, W.M. is cancelled.
8. The original season, rate, duty, and all other conditions and limitations contained in the original water rights shall remain in effect for all rights.

WITNESS the signature of the Oregon Water Resources Director, affixed 6/19/97.

  
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Martha O. Pagel, Director