

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING CHANGE IN
T-9777, Baker County)	PLACE OF USE, ADDITIONAL POINTS OF
)	APPROPRIATION AND DIMINUTION OF
)	CERTAIN WATER RIGHTS
)	

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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

FRANK TETRAULT
709 FIRST AVENUE E.
KALISPELL, MONTANA 59901

Agent

B. KENT JUSTUS
20539 MEDICAL SPRINGS HWY
BAKER CITY, OREGON 97814

Findings of Fact

1. On August 30, 2004, Frank Tetrault filed a transfer application to change the place of use, and add a point of appropriation under Certificates 45717 and 45719. The Department assigned the application number T-9777

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

Certificate: 45717 in the name of Frank A. Tetrault

Use: Irrigation of 159.3 acres: 28.5 acres – place of use (POU) & additional point of appropriation (APOA) and 130.8 acres – APOA only

Priority Date: May 31, 1967

Quantity: 0.71 cubic foot per second (cfs)

Rate/Duty: 1/80 cfs per acre, not to exceed 3.0 acre-feet per acre and shall be further limited to appropriation of water only to the extent that it does not impair or substantially interfere with existing surface water rights of others.

Source: A Sump Pond in the Baldock Slough Basin

Authorized Point of Appropriation:

Township		Range		Meridian	Sec	¼ ¼	Location
8	S	40	E	W.M.	14	SW NE	Sump -1700 Feet South and 2170 Feet West from NE Corner, Section 14

This is a final order in other than 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 either 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 Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
8	S	40	E	W.M.	11	NE SE	4.5 (APOA)
8	S	40	E	W.M.	11	NW SE	2.5 (APOA)
8	S	40	E	W.M.	11	SW SE	36.0 (APOA)
8	S	40	E	W.M.	11	SE SE	39.5 (APOA)
8	S	40	E	W.M.	13	NW NW	9.9 (POU&APOA)
8	S	40	E	W.M.	13	NW NW	28.5 (APOA)
8	S	40	E	W.M.	13	SW NW	18.6 (POU&APOA)
8	S	40	E	W.M.	13	SW NW	19.8 (APOA)

3. Application T-9740 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	Acres
8	S	40	E	W.M.	12	SW SW	8.7
8	S	40	E	W.M.	13	SE NW	19.8

4. Application T-9740 proposes to add a point of appropriation to:

Township		Range		Meridian	Sec	¼ ¼	Location
8	S	40	E	W.M.	14	SE NE	Well - 2660 Feet South and 40 Feet West from NE Corner, Section 14

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

Certificate: 45719 in the name of Frank A. Tetrault

Use: Irrigation of 154.1 acres: 63.6 Acres – POU & APOA and 90.5 Acres – APOA only

Priority Date: March 5, 1971

Quantity: 0.87 cfs

Rate/Duty: 1/80 cfs per acre, not to exceed 2.5 acre-feet per acre

Source: A Well in the Baldock Slough Basin

Authorized Point of Appropriation:

Township		Range		Meridian	Sec	¼ ¼	Location
8	S	40	E	W.M.	14	SE NE	Well - 2660 Feet South and 40 Feet West from NE Corner, Section 14

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
8	S	40	E	W.M.	14	NE NE	0.5(POU&APOA)
8	S	40	E	W.M.	14	NE NE	40.0 (APOA)
8	S	40	E	W.M.	14	NW NE	4.0 (POU&APOA)
8	S	40	E	W.M.	14	NW NE	36.5 (APOA)
8	S	40	E	W.M.	14	SW NE	23.7 (POU&APOA)

Township		Range		Meridian	Sec	¼ ¼	Acres
8	S	40	E	W.M.	14	SW NE	8.9 (APOA)
8	S	40	E	W.M.	14	SE NE	35.4 (POU&APOA)
8	S	40	E	W.M.	14	SE NE	5.1 (APOA)

6. Application T-9740 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	Acres
8	S	40	E	W.M.	13	NW NE	5.5
8	S	40	E	W.M.	13	NE NW	36.0
8	S	40	E	W.M.	13	SE NW	16.5
8	S	40	E	W.M.	13	SW NE	5.6

7. Application T-9740 proposes to add a point of appropriation to:

Township		Range		Meridian	Sec	¼ ¼	Location
8	S	40	E	W.M.	14	SW NE	Sump-1700 Feet South and 2170 Feet West from NE Corner, Section 14

8. An affidavit was received from Frank Tetrault diminishing portions of Certificates 73610 and 73999 from Primary Irrigation to Supplemental Irrigation. These lands overlay portions of Certificate 45717 that are also designated as Primary Irrigation. Mr. Tetrault requested the following locations be diminished to Supplemental Irrigation:

CERTIFICATE 73610

(Supplemental Irrigation - Powder River & Storage)

NW¼ NE¼ 39.9 Acres

SW¼ NE¼ 40.0 Acres

NE¼ SE¼ 7.1 Acres

NW¼ SE¼ 40.0 Acres

SECTION 11

TOWNSHIP 8 SOUTH, RANGE 40 EAST, W.M.

CERTIFICATE 73999

(Supplemental Irrigation - Powder River & Storage)

SW¼ SE¼ 25.6 Acres

SECTION 2

NE¼ NE¼ 14.4 Acres

SE¼ NE¼ 27.1 Acres

NE¼ SE¼ 30.2 Acres

SW¼ SE¼ 37.2 Acres

SE¼ SE¼ 38.9 Acres

SECTION 11

TOWNSHIP 8 SOUTH, RANGE 40 EAST, W.M.

9. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
10. Water has been used within the last five years according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
11. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right is present.
12. The proposed change would not result in enlargement of the right.

Conclusions of Law

The changes in place of use and additional points of appropriation proposed in application T-9777 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580, and OAR 690-380-5000. The portions of water right Certificates 73610 and 73999 appurtenant to the lands identified in Finding of Fact 8 should be diminished to Supplemental Irrigation.

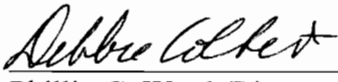
Now, therefore, it is ORDERED:

1. The changes in place of use and additional points of appropriation proposed in application T-9777 are approved.
2. Water right certificates 45717 and 45719 are cancelled. A new certificate will be issued describing that portion of the rights not involved in this transfer.
3. Water right certificates 73610 and 73999 are modified to reflect the diminishment to Supplemental Irrigation of the rights described in Finding of Fact 8.
4. The right to 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 45717 and 45719 and any related decree.
5. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2007. 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.
6. The quantity of water diverted at the additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.
7. The former place of use shall no longer be irrigated as part of this water right.
8. Prior to diverting water at the new point of appropriation, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the

quantity of water appropriated. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

9. The Department shall issue water right certificates on a determination that it is necessary to produce a certificate describing the water rights that are in the name of Baker Valley Irrigation District and the US Bureau of Reclamation.
10. When satisfactory proof of the completed changes is received, new certificates confirming the rights in the names of private individuals will be issued.

Dated at Salem, Oregon this 3rd day of January, 2006.


for Phillip C. Ward, Director

Mailing date: JAN 04 2006