

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-11648, Umatilla County) CHANGE IN POINT OF DIVERSION

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

DILLON IRRIGATION COMPANY
31466 ANDREWS RD.
ECHO, OR 97826

Findings of Fact

1. On August 9, 2013, DILLON IRRIGATION COMPANY filed an application for an additional point of diversion under adjudicated, un-certificated rights (Umatilla River Decree Volume 3, Page 127 and Volume 15, Page 378). The Department assigned the application number T-11648.
2. On March 10, 2014, the applicant requested the application be amended to a change in the point of diversion and not an additional point of diversion.
3. Notice of the application for transfer was published on August 20, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On April 17, 2014, the Department issued a draft Preliminary Determination that set a deadline of May 17, 2014, for the applicant to respond to the Department's findings.
5. On June 24, 2014, the Department mailed a revised copy of the draft Preliminary Determination proposing to deny Transfer Application T-11648 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of July 24, 2014, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.

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.

6. On June 27, 2014, the applicant requested that the Department seek a recommendation from the Oregon Department of Fish and Wildlife as to whether the Department should consent to injury of the instream water right pursuant to OAR 690-380-5050.
7. On July 25, 2014, the Department issued a Preliminary Determination proposing to deny Transfer T-11648 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on July 29, 2014, and in the East Oregonian newspaper on September 16 and 23, 2014 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
8. The first right to be transferred is as follows:

Decree: Umatilla River in the name of DILLON IRRIGATION COMPANY
(Volume 3 Page, 127)

Use: IRRIGATION, LIVESTOCK, AND DOMESTIC of 753.40 ACRES

Priority Date: NOVEMBER 17, 1897 and 1907

Rate/Duty: 9.30 CUBIC FEET PER SECOND (subject to the provisions of the Umatilla River Decree, Paragraph 33)

Period of Use: Usually MARCH 1 to NOVEMBER 1

Source: UMATILLA RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion: Not described in Decree

Authorized Place of Use:

PRIORITY DATE: NOVEMBER 17, 1897						
IRRIGATION, LIVESTOCK, AND DOMESTIC						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax lot
3 N	28 E	WM	1	NE NE	40.00	100
3 N	28 E	WM	1	NW NE	19.80	100
3 N	28 E	WM	1	NW NE	15.20	400
3 N	28 E	WM	1	SW NE	10.20	400
3 N	28 E	WM	1	SW NE	13.80	401
3 N	28 E	WM	1	SE NE	14.00	400
3 N	28 E	WM	1	NE NW	10.00	400
3 N	29 E	WM	6	NW NW	50.00	600
3 N	29 E	WM	6	SW NW	42.90	600
4 N	28 E	WM	36	NW NE	2.00	2902
4 N	28 E	WM	36	SW NE	14.40	2902
4 N	28 E	WM	36	SW NE	12.60	3000
4 N	28 E	WM	36	SE NE	18.90	2600
4 N	28 E	WM	36	SE NE	9.90	2700
4 N	28 E	WM	36	SE NE	9.70	2800
4 N	28 E	WM	36	NE SE	37.00	3100
4 N	28 E	WM	36	SE SE	36.00	3100
4 N	29 E	WM	31	NW SW	3.50	1700
4 N	29 E	WM	31	SW SW	3.50	1700
TOTAL					363.40	

PRIORITY DATE: 1907						
IRRIGATION, LIVESTOCK, AND DOMESTIC						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax lot
3 N	28 E	WM	1	NE NW	5.00	400
4 N	28 E	WM	35	NE NE	13.00	3402
4 N	28 E	WM	35	NW NE	12.00	3402
4 N	28 E	WM	35	SW NE	20.00	3407
4 N	28 E	WM	35	SE NE	20.00	3490
4 N	28 E	WM	35	NE NW	18.00	3400
4 N	28 E	WM	35	NW NW	9.70	3400
4 N	28 E	WM	35	SW NW	7.00	3400
4 N	28 E	WM	35	SE NW	19.00	3400
4 N	28 E	WM	36	NE NW	19.10	3200
4 N	28 E	WM	36	NW NW	20.00	3490
4 N	28 E	WM	36	SW NW	40.00	3490
4 N	28 E	WM	36	SE NW	40.00	3200
4 N	28 E	WM	36	NE SW	39.10	3200
4 N	28 E	WM	36	NW SW	36.10	3490
4 N	28 E	WM	36	SW SW	8.00	3406
4 N	28 E	WM	36	SE SW	31.00	3200
4 N	29 E	WM	31	NW SW	16.50	1700
4 N	29 E	WM	31	SW SW	16.50	1700
TOTAL					390.00	

9. The Umatilla River Decree Volume 3, Page 127, does not provide a detailed description of the location of the authorized the point of diversion, however the applicant has provided a description of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Tax lot	Measured Distances
3 N	29 E	WM	8	SE NW	1200	1475 FEET SOUTH AND 2285 FEET EAST FROM THE NW CORNER OF SECTION 8

10. Transfer Application T-11648 proposes to move the point of diversion to a location approximately 2.6 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
3 N	29 E	WM	21	SW NE	100	NORTH 76 DEGREES 45 MINUTES 56 SECONDS EAST; 2913.19 FEET FROM THE W ¼ CORNER OF SECTION 21

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

Decree Umatilla River in the name of DILLON IRRIGATION COMPANY
(Volume 15, Page 397)

Use: IRRIGATION of 1008.80 ACRES

Priority Date: 1907

Rate/Duty: 14.41 CUBIC FEET PER SECOND (subject to the provisions of the Umatilla River Decree, Paragraph 33)

Period of Use: USUALLY MARCH 1 TO NOVEMBER 1

Source: UMATILLA R, tributary to the COLUMBIA RIVER

Authorized Point of Diversion: DILLON CANAL

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
3 N	28 E	WM	1	NW NE	3.30	400
3 N	28 E	WM	1	SW NE	7.10	401
3 N	28 E	WM	1	NE NW	23.00	400
3 N	28 E	WM	1	NW NW	31.80	400
3 N	28 E	WM	1	NW NW	1.10	401
3 N	28 E	WM	1	SW NW	34.60	401
3 N	28 E	WM	1	SE NW	1.20	400
3 N	28 E	WM	1	SE NW	33.10	401
3 N	28 E	WM	1	NE SW	35.70	401
3 N	28 E	WM	1	NW SW	25.10	401
3 N	28 E	WM	1	SE SW	23.60	401
3 N	28 E	WM	1	NE SE	38.00	300
3 N	28 E	WM	1	NW SE	40.00	401
3 N	28 E	WM	1	NW SE	34.20	401
3 N	28 E	WM	1	SE SE	37.40	300
3 N	29 E	WM	6	NW SW	51.80	1190
3 N	29 E	WM	6	SW SW	53.00	1190
4 N	28 E	WM	34	SW NE	8.20	3400
4 N	28 E	WM	34	SE NE	10.80	3400
4 N	28 E	WM	34	SW NW	2.40	3400
4 N	28 E	WM	34	SW NW	16.40	3404
4 N	28 E	WM	34	SE NW	11.60	3400
4 N	28 E	WM	34	SE NW	12.90	3404
4 N	28 E	WM	34	NE SE	17.00	3600
4 N	28 E	WM	35	NE NE	1.50	3402
4 N	28 E	WM	35	SW NE	5.00	3407
4 N	28 E	WM	35	SW NW	24.00	3400
4 N	28 E	WM	35	SE NW	16.30	3400
4 N	28 E	WM	35	NE SW	39.40	3400
4 N	28 E	WM	35	NW SW	38.00	3400
4 N	28 E	WM	35	SW SW	26.10	3400
4 N	28 E	WM	35	SE SW	39.80	3400
4 N	28 E	WM	35	NE SE	20.80	3400
4 N	28 E	WM	35	NW SE	39.40	3400
4 N	28 E	WM	35	SW SE	35.80	3400
4 N	28 E	WM	35	SE SE	35.00	3403
4 N	28 E	WM	36	NE NE	5.00	2800
4 N	28 E	WM	36	NW NE	9.20	2902
4 N	28 E	WM	36	NW NE	3.80	3000
4 N	28 E	WM	36	SW NE	5.40	2900
4 N	28 E	WM	36	SW NE	3.40	3000
4 N	28 E	WM	36	NW NW	11.40	3490
4 N	28 E	WM	36	SW SW	24.50	3406
4 N	28 E	WM	36	SE SW	3.80	3406

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
4 N	28 E	WM	36	NW SE	30.50	3100
4 N	28 E	WM	36	SW SE	34.00	3100
4 N	29 E	WM	31	NW SW	3.40	1700
TOTAL					1008.80	

12. The Umatilla River Decree Volume 15, Page 397, does not provide a detailed description of the location of the authorized the point of diversion, however the applicant has provided a description of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
3 N	29 E	WM	8	SE NW	1200	1475 FEET SOUTH AND 2285 FEET EAST FROM THE NW CORNER OF SECTION 8

13. Transfer Application T-11648 proposes to change the point of diversion to a location approximately 2.6 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
3 N	29 E	WM	21	SW NE	100	NORTH 76 DEGREES 45 MINUTES 56 SECONDS EAST; 2913.19 FEET FROM THE W¼ CORNER OF SECTION 21

14. The Oregon Department of Fish and Wildlife has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is currently equipped with an appropriate fish screen.

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

15. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
16. A pump and pipeline and a municipal delivery system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11648.
17. The Department requires a suitable measuring device at the proposed point of diversion. The proposed point of diversion is currently equipped with a gaging station that satisfies this requirement.
18. The proposed change would not result in enlargement of the right.
19. An instream water right, Certificate 59837, exists for the reach of the river in which the authorized point of diversion would be moved upstream, and streamflows within the reach are frequently below the levels allocated under the instream water right. Thus, the instream water right would be injured as a result of the proposed point of diversion.

Conclusions of Law

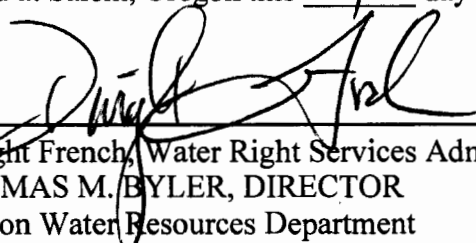
The change point of diversion proposed in Transfer application T-11648 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. The Oregon Department of Fish and Wildlife recommends the Department consent to injury of an instream water right filed pursuant to OAR 690-380-5050 or protests are filed pursuant to OAR 690-380-4030.

Now, therefore, it is ORDERED:

1. The change in point of diversion proposed in Transfer Application T-11648 is 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 the Umatilla River Decree Volume 3, Page 127-251 and Volume 15, Page 397-444.
3. The Umatilla Decree Volume 3, Page 127-251 and Volume 15, Pages 397- 444 contain descriptions of the right to be transferred; the portion of right described and/or identified as Dillon Irrigation Company is cancelled. A Certificate will be issued describing that portion of the right not affected by this transfer.
4. The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
5. The water user shall insure the existing measurement device is maintained and operated and shall make such improvements as may be required by the Department. If in the judgment of the Watermaster a different type of measuring device is needed an alternate measuring device may be required. The Western Land Canal NR Echo gaging station on the Umatilla River (Station number 14030500) is the current measuring point for this right.
6. The water user shall allow the Watermaster access to the meter or measuring device provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
7. The water user shall operate and maintain an approved fish screen at the new point of diversion. If Oregon Department of Fish and Wildlife (ODFW) determine the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
8. Recommendation for consent to injury of Certificate 59837 is contingent upon the removal of Dillon Dam by the end of 2016. Removal shall include the dam and all associated structures within the active channel of the Umatilla River at the site.
9. The applicant shall notify ODFW and the Department in writing if the dam is not removed by the end of 2016 as planned. ODFW may then re-evaluate the timeline for dam removal and may submit to the Department a revision of this recommendation to consent to injury.

10. Should the applicant be unable to complete the dam removal in the time allowed, the applicant must apply for and have approval of an extension of time for completion for a period up to, but not to exceed two additional years.
11. Should the applicant not prove up on the new point of diversion the applicant can apply for a reversion of the point of diversion to the original diversion point.
12. Removal of Dillon Dam must occur during the established in-water work period or under approval from ODFW.
13. The change in point of diversion proposed in application T-11648 is approved.
14. 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 the Umatilla River Decree Vol. 3, Page 127 and Vol. 15, Page 397 and any related decree.
15. The portion of the Decree that references Dillon Irrigation Company is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
16. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.
17. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 9 day of February, 2015.



Dwight French, Water Right Services Administrator, for
THOMAS M. BYLER, DIRECTOR
Oregon Water Resources Department

FEB 11 2015
Mailing Date