

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

In the Matter of Transfer Application                    )     **FINAL ORDER APPROVING A**  
T-11736, Wallowa 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**

BANE INVESTMENTS LLC  
PO BOX 337  
ENTERPRISE, OR 97828

**Findings of Fact**

1. On January 24, 2014, BANE INVESTMENTS LLC filed an application to change the point of diversion under Certificate 39329. The Department assigned the application number T-11736.
2. Notice of the application for transfer was published on February 4, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 12, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11736 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 10, 2014, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.
4. On December 1, 2014, the applicant provided information to the Department that the current owners are Vaughn D. Gilliland and Kristen R. Gilliland. On December 17, 2014, the Department received Consent for the transfer from the Gilliland's.
5. On October 14, 2014, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11736 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on October 21, 2014, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

**Certificate:** 39329 in the name of J. D. BANE (perfected under Permit S-33232)  
**Use:** IRRIGATION of 0.41 ACRE  
**Priority Date:** MARCH 21, 1967  
**Rate:** 0.01 CUBIC FOOT PER SECOND  
**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.5 acre feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** PRAIRIE CREEK, a tributary of WALLOWA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
2 S	44 E	WM	2	NW NE	2	SOUTH 58 DEGREES, 12 MINUTES WEST 1859 FEET FROM THE NE CORNER OF SECTION 2

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acre
2 S	44 E	WM	2	NW NE	2	0.41

7. Transfer Application T-11736 proposes to move the authorized point of diversion approximately 250 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
2 S	44 E	WM	2	NW NE	2	POD 3 - SOUTH 1180.9 FEET AND 1533.4 FEET WEST FROM THE NE CORNER OF SECTION 2

8. The Oregon Department of Fish and Wildlife (ODFW) 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 not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

9. Water has been used within the last five years 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.
10. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-11736.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

**Conclusions of Law**

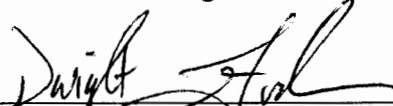
The change in point of diversion proposed in Transfer Application T-11736 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The change in point of diversion proposed in Transfer Application T-11736 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 Certificate 39329 and any related decree.
3. Water right Certificate 39329 is cancelled. A new 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. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state’s criteria, or that ODFW has determined a screen is not necessary.  

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW’s operational and maintenance standards. If ODFW determines 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.
6. 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.
7. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 22 day of December, 2014.

  
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 Dwight French, Water Right Services Administrator, for  
 Thomas M. Byler, Director  
 Oregon Water Resources Department

**JAN 08 2015**

Mailing Date: \_\_\_\_\_