

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11080, Wallowa County	)	PROPOSING APPROVAL OF A
	)	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**

Daryl and Amy Nobles  
67275 Lostine River Road  
Lostine, OR 97857

**Agent**

Bagett-Griffith & Blackman  
2006 Adams Ave  
LaGrande, OR 97850

**Findings of Fact**

**Background**

1. On May 26, 2010, Darryl and Amy Nobles filed an application to change the point of diversion under Certificate 3082. The Department assigned the application number T-11080.
2. The portion of the right to be transferred is as follows:
  - Certificate:** 3082 in the name of Jay and Edith Lewis, (confirmed by Wallowa River Decree)
  - Use:** IRRIGATION, LIVESTOCK AND DOMESTIC
  - Priority Date:** 1888
  - Acres:** 18.8 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 1½ acre-feet per acre during any period of 30 days prior to July 31<sup>st</sup> of each year, and thereafter not to exceed 1.0 acre foot per acre during the entire remainder of the irrigation season; and said right shall be subject to all other conditions and limitations contained in said decree.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.
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**Source:** SOUTH FORK (aka LOSTINE FORK) OF WALLOWA RIVER, tributary to the WALLOWA RIVER

**Authorized Place of Use:**

IRRIGATION, LIVESTOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	43 E	WM	15	SW SE	18.8

- Certificate 3082 does not identify the point of diversion. However, information available from the Certified Water Right Examiner and the decree maps indicate that the authorized point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q
1 S	43 E	WM	27	NE NW

- Transfer Application T-11080 proposes to move the authorized point of diversion approximately 2.0 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	22	NW NE	LOSTINE DITCH: 881 FEET SOUTH AND 2546 FEET WEST FROM THE NE CORNER OF SECTION 22

- Notice of the application for transfer was published on June 1, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On July 2, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11080 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 2, 2010, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
- The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is currently equipped with an appropriate fish screening and/or by-pass device.

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

- 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.

9. A diversion structure and ditch 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-11080.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

### **Determination and Proposed Action**

The change in point of diversion proposed in Transfer Application T-11080 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If application T-11080 is approved, the final order will include the following:*

1. *The change in point of diversion proposed in application T-11080 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 3082 and any related decree.*
3. *Water right certificate 3082 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. *The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.*
6. *The water user shall maintain the existing headgate and shall make such improvements as may be required by the Department.*
7. *The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.*
8. *The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. 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.*

9. *When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 31 day of August 2010.

  
Phillip C. Ward, Director

This Preliminary Determination was prepared by Carrie Jones. If you have questions about the information in this document, you may reach me at 541-523-8224 x 36 or [Carrie.R.Jones@wrд.state.or.us](mailto:Carrie.R.Jones@wrд.state.or.us).

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.