

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

In the Matter of Transfer Application)
T-9715, Wallowa County)
)
) **AMENDED PRELIMINARY**
) **DETERMINATION PROPOSING**
) **DENIAL 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

WOODY WOLFE
81544 HWY 82
WALLOWA, OR 97885

Findings of Fact

Background

1. This Amended Preliminary Determination is issued to reflect the amended application received on September 14, 2011, and supersedes the Preliminary Determination issued on March 1, 2005.
2. On May 6, 2004, WOODY WOLFE filed an application for an additional point of diversion under Certificate 3922. The Department assigned the application number T-9715.
3. Notice of the application for transfer was published on May 24, 2004, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On February 15, 2005, the Department issued a draft Preliminary Determination proposing to deny Transfer Application T-9715 and mailed a copy to the applicant. The draft Preliminary Determination proposed to denial because of the potential to injure an instream water right.
5. The applicant requested that the Department seek a recommendation from Oregon Department of Fish and Wildlife (ODFW) as to whether the Department should consent to injury of the instream water right pursuant to OAR 690-380-4030.
6. On March 1, 2005, the Department issued a Preliminary Determination proposing to deny Transfer Application T-9715, and mailed a copy to the applicant. Additionally, notice of the

Preliminary Determination was published in the Department's weekly notice on March 8, 2005.

7. On March 1, 2005, the Department requested ODFW submit a recommendation on whether the Department should consent to the injury to instream water right 59814 that would result from approval of Transfer Application T-9715.
8. On September 14, 2011, the applicant submitted an amended application and map indicating the transfer application request was for a change in point of diversion, and reducing the number of acres appurtenant to the point of diversion change.
9. The portion of the right, as amended, to be transferred is as follows:

Certificate: 3922 in the name of L J WILLETT (perfected under Permit S-5571)
Use: IRRIGATION of 38.6 ACRES
Priority Date: AUGUST 11, 1922
Rate: 0.49 CUBIC FOOT PER SECOND
Source: SOUTH FORK OF WALLOWA RIVER, tributary to the WALLOWA RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	19	NE SW	3.5
1 N	43 E	WM	19	NW SW	1.0
1 N	43 E	WM	19	SW SW	1.0
1 N	43 E	WM	19	SE SW	31.5
1 N	43 E	WM	19	SW SE	1.6

10. Certificate 3922 describes the source of water as the South Fork of the Wallowa River. This stream is also known as the Lostine River.
11. Certificate 3922 does not provide the location of the authorized point of diversion. However, based on the information available including the Department's records and the Certified Water Right Examiner's inspection, the point of diversion is located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	43 E	WM	30	SE NE	279 FEET WEST AND 2297 FEET SOUTH FROM THE NE CORNER OF SECTION 30

12. Transfer Application T-9715 proposes to move the authorized point of diversion approximately 2.17 miles upstream in the Lostine River to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	43 E	WM	33	NW SW	223 FEET EAST AND 1916 FEET NORTH FROM THE SW CORNER OF SECTION 33

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

14. 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.
15. A diversion structure and ditch 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-9715.
16. The proposed change would not result in enlargement of the right.
17. An instream water right, Certificate 59814, exists for the reach of the river in which the authorized point of diversion would be moved upstream, and stream flows 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 change in point of diversion.

Determination and Proposed Action

The change in point of diversion proposed in Transfer Application T-9715 appears not to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. Pursuant to ORS 540.530, the application will be **denied** unless, on the recommendation of ODFW, the Department consents to injury of instream water right 59814.

Dated at Salem, Oregon this 21 day of September 2011.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Teri Hranac. If you have questions about the information in this document, you may reach me at 503-986-0881 or Teri.K.Hranac@wrdd.state.or.us.

Protests should be addressed to the attention of Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1271

