

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11275, Wallowa County	)	PROPOSING APPROVAL OF A
	)	CHANGE FROM A SURFACE WATER
	)	DIVERSION POINT TO A GROUND
	)	WATER POINT OF APPROPRIATION

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

CITY OF LOSTINE
KRAG NORTON, MAYOR
PO BOX 181
LOSTINE, OR 97857

Agent

ANDERSON PERRY AND ASSOCIATES
ATTN- MIKE POSADA
1901 N FIR ST
LA GRANDE, OR 97850

Findings of Fact

Background

1. On August 1, 2011, the CITY OF LOSTINE filed an application to change from a surface water diversion point to a ground water point of appropriation under Certificate 3088. The Department assigned the application number T-11275.
2. The applicant requested to transfer only a portion of the right that reflects the capacity of the proposed point of appropriation which is 0.557 CFS. The portion of the right (1.943 CFS) will remain unmodified, at the authorized diversion point.
3. A portion of the first right to be transferred is as follows:

Certificate:	3088 in the name of CITY OF LOSTINE (confirmed by Wallowa River Decree)
Use:	MUNICIPAL USES
Priority Date:	1881
Rate:	0.557 CUBIC FOOT PER SECOND
Source:	SOUTH FORK OF THE WALLOWA RIVER, tributary to the WALLOWA RIVER

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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Authorized Place of Use: Within the City of Lostine, Wallowa County, Oregon

4. Certificate 3088 does not describe the location of the point of diversion, however information is available from the transfer application and transfer application map indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	22	NW NE	940 FEET SOUTH AND 2465 FEET WEST FROM THE SE CORNER OF SECTION 15

5. Certificate 3088 does not define the place of use, however information is available from the transfer application and transfer application map which defined the boundaries of the City of Lostine and is located as follows:

City of Lostine - Place of Use				
Twp	Rng	Mer	Sec	Q-Q
1 S	43 E	WM	10	SE NW
1 S	43 E	WM	10	SW NW
1 S	43 E	WM	10	NE SW
1 S	43 E	WM	10	NW SW
1 S	43 E	WM	10	SW SW
1 S	43 E	WM	10	SE SW
1 S	43 E	WM	10	SW SE
1 S	43 E	WM	10	SE SE
1 S	43 E	WM	15	NE NE
1 S	43 E	WM	15	NW NE
1 S	43 E	WM	15	SW NE
1 S	43 E	WM	15	NE NW
1 S	43 E	WM	15	NW NW
1 S	43 E	WM	15	SE NW
1 S	43 E	WM	15	NE SW
1 S	43 E	WM	15	NW SE
1 S	43 E	WM	15	SW SE

6. Transfer Application T-11275 proposes to change from a surface water diversion point for a portion of the right (0.557 CFS) to a ground water point of appropriation (well) approximately 65 feet North and 5 feet east from the authorized point of diversion located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	22	NW NE	LOSTINE CITY WELL #1 - 875 FEET SOUTH AND 2460 FEET WEST FROM THE SE CORNER OF SECTION 15

7. Notice of the application for transfer was published on August 9, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notices.
8. On October 19, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11275 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 18, 2011, 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.

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 rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
10. A pump, pipeline, and steel tank reservoirs sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11275.
11. The proposed point of appropriation meets the requirements of ORS 540.531. and OAR 690-280-2130(3) and (4).
12. The proposed change would not result in injury to other water rights.
13. The proposed changes would not result in enlargement of the right.

Determination and Proposed Action

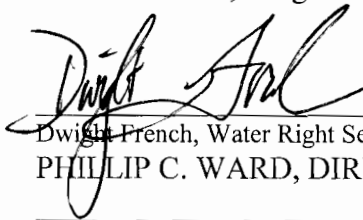
The proposed change from a surface water diversion point of diversion to a ground water point of appropriation proposed in Transfer Application T-11275 appears to be consistent with the requirements of ORS 540.505 to 540.580. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If application T-11275 is approved, the final order will include the following:

1. *The change from a surface water diversion point to a ground water point of appropriation proposed in Transfer Application T-11275 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 3088 and any related decree.*
3. *Water right Certificate 3088 is cancelled. A new certificate will be issued describing that portion NOT modified by this transfer.*
4. *The quantity of water diverted at the point of appropriation, shall not exceed 0.557 cfs.*
5. *The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion under the transferred portion of the right. However, if within five years after approval of the transfer, the Department receives a transfer application to return the portion of the right to the last authorized surface water point of diversion, the application shall be approved.*

6. *The proposed well shall retain the original date of priority. However if within five years after approving the transfer, the Department finds that the transfer results in substantial interference with existing groundwater rights that would not have occurred in the absence of the transfer, the proposed well shall be subordinate to any existing right injured by the transferred water right.*
7. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion.*
 - b. *The water user shall maintain the meter or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring devices; provided however, where the meter or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
8. *The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2013**. 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 1 day of December, 2011.



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

This Preliminary Determination was prepared by Carrie Matthews. If you have questions about the information in this document, you may reach me at 541-523-8224 ext. 36 or Carrie.R.Matthews@wrdd.state.or.us