



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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Salem, OR 97301
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April 9, 2012

Applicant

AUXIER NATURAL RESOURCES NO. 1 LLC
5285 SW MEADOWS RD., SUITE 333
LAKE OSWEGO, OR 97035

Agent

CORNERSTONE SURVEYING INC.
PO BOX 33
JOHN DAY, OR 97845

SUBJECT: Water Right Transfer Application T-11250

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11250. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Blue Mountain Eagle newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at (503) 986-0890 or Dorothy.I.Pedersen@wrd.state.or.us if I may be of assistance.

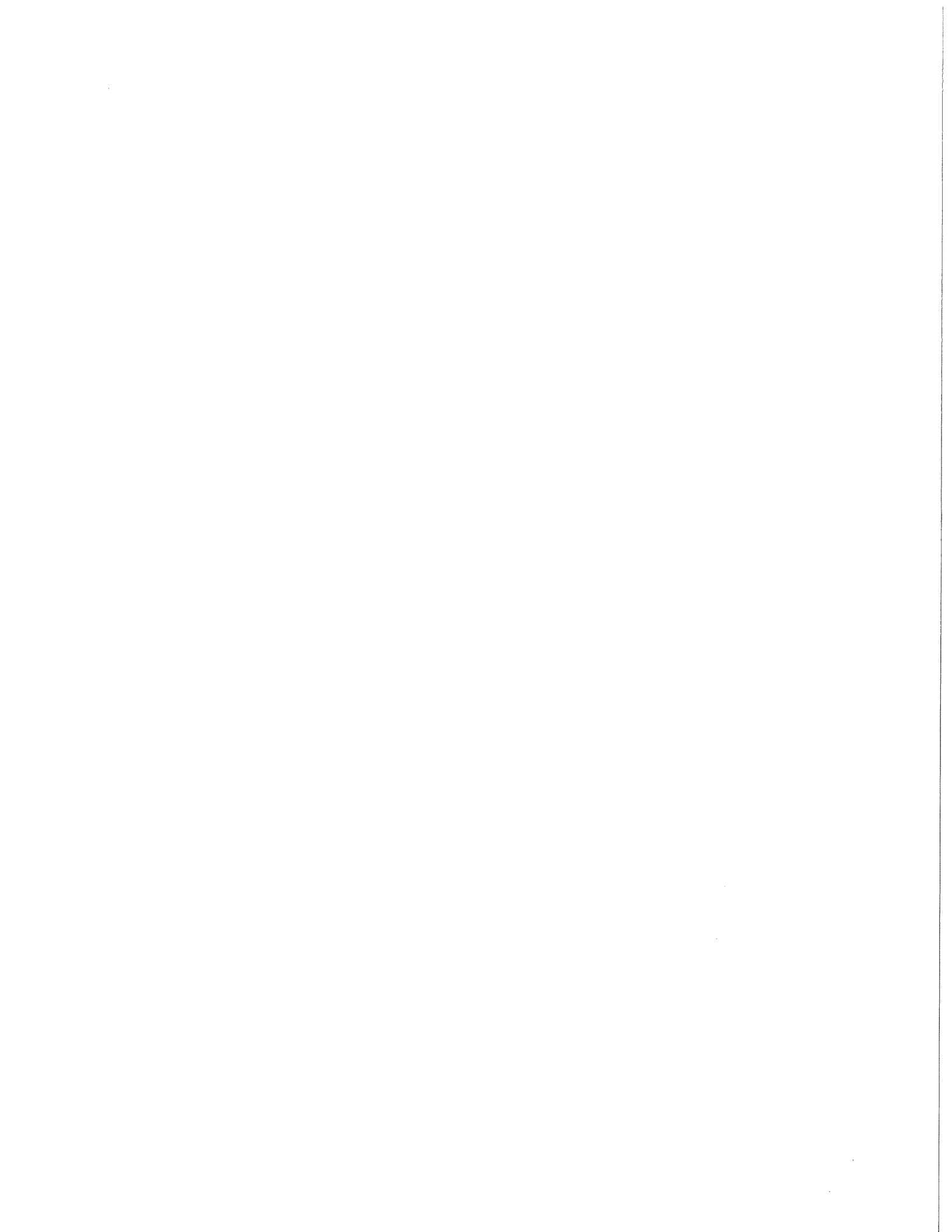
Sincerely,

Dorothy Pedersen
Transfer Program Advisor
Transfer and Conservation Section

cc: T-11250
Eric W. Julsrud, District 4 Watermaster (*via e-mail*)
Cornerstone Surveying Inc., Agent for the applicant (*via e-mail*)

encs





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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11250, Grant County)	PROPOSING APPROVAL OF
)	CHANGES IN POINTS OF DIVERSION
)	AND PLACES OF USE

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

AUXIER NATURAL RESOURCES I
5285 SW MEADOWS RD SUITE 333
LAKE OSWEGO OR 97035

Findings of Fact

Background

1. On May 25, 2011, Auxier Natural Resources I filed an application to change the points of diversion and to change the place of use under Certificates 36874 and 52550. The Department assigned the application number T-11250.
2. The portion of the first right to be transferred is as follows:
 - Certificate:** 36874 in the name of George Mackay (perfected under Permit S-28045)
 - Use:** Supplemental Irrigation of 3.1 acres
 - Priority Date:** May 2, 1962
 - Rate:** 0.07 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 5 acre feet per acre for each acre irrigated during the irrigation season of each year; provided further that the right to use of water is limited to the period when the John Day River is more than 30 c.f.s. at USGS Gage No. 14-0465 and more than 20 c.f.s. at USGS Gage No. 14-0480; and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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.

Source: John Day River, tributary of Columbia River

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	27 E	WM	3	SE SW	500 FEET NORTH AND 1670 FEET EAST FROM THE SE CORNER OF SECTION 4
13 S	27 E	WM	4	SE SE	340 FEET NORTH AND 10 FEET WEST FROM THE SE CORNER OF SECTION 4

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	27 E	WM	3	SW SW	0.7
13 S	27 E	WM	3	SE SW	2.4

3. Transfer Application T-11250 proposes to move the authorized point of diversion, approximately 2100 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	27 E	WM	3	SW SW	400 FEET NORTH AND 200 FEET EAST FROM THE SW CORNER OF SECTION 3

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

Certificate: 52550 in the name of Donald MacLennan and Loring V. Stewart (perfected under Permit S-2868)

Use: Irrigation of 27.5 acres

Priority Date: March 20, 1916

Rate: 0.34 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-eighth of one cubic foot per second per acre, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Source: John Day River, a tributary to the Columbia River

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	27 E	WM	3	NW SW	1.6
13 S	27 E	WM	3	SW SW	17.5
13 S	27 E	WM	3	SE SW	3.4
13 S	27 E	WM	4	NE SE	5.0

5. Certificate 52550 does not describe the location of the point of diversion, however information is available from transfer application map indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
13 S	28 E	WM	18	NW NW	SOUTH 68 DEGREES, EAST 840 FEET FROM THE NW CORNER OF SECTION 18.

6. Transfer Application T-11250 proposes to move the authorized point of diversion approximately 5 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	27 E	WM	3	SW SW	400 FEET NORTH AND 200 FEET EAST FROM THE SW CORNER OF SECTION 3

7. Application T-11250 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	27 E	WM	3	NW SW	1.6
13 S	27 E	WM	3	SW SW	22.1
13 S	27 E	WM	3	SE SW	2.4
13 S	27 E	WM	4	NE SE	1.4

8. Notice of the application for transfer was published on May 31, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. On March 12, 2012, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11250 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 11, 2012, 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.
10. The Oregon Department of Fish and Wildlife 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 not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.
11. The transfer requires a loss factor method be applied to prevent injury to other water right holders. The distance involved between the original and proposed point of diversion is approximately 5 miles. Based on the best available information a loss factor of about 1.0 percent would be appropriate to apply.

(1% X 0.34 CFS = 0.003 CFS (total loss)); 0.34 CFS - 0.003 CFS = 0.337 CFS available to pump at the proposed POD.

If the actual loss rate is determined to be different than the 1.0 percent applied in this mitigation analysis, the actual loss rate will be adjusted accordingly.

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

12. Water has been used within the five-year period prior to submittal of the transfer application 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.

13. A diversion structure and ditch 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-11250.
14. The proposed changes would not result in enlargement of the rights.
15. The proposed changes, as condition in Finding of Fact #11, would not result in injury to other water rights.

Determination and Proposed Action

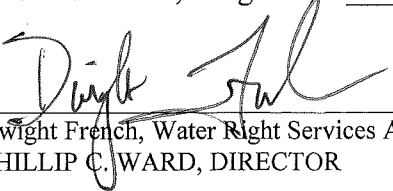
The change in points of diversion and change in place of use proposed in Transfer Application T-11250 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-11250 is approved, the final order will include the following:

1. *The change in points of diversion and change in place of use proposed in application T-11250 are 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 Certificates 36874 and 52550 and any related decree.*
3. *Water right certificates 36874 and 52550 are cancelled. A new certificate will be issued describing that portion of 36874 not affected by this transfer.*
4. *The quantity of water diverted at the new point of diversion for 36874, shall not exceed the quantity of water lawfully available at the original points of diversion.*
5. *The quantity of water diverted at the new point of diversion for 52550, shall not exceed the quantity of water lawfully available at the original point of diversion minus a loss factor estimated to be 1%. The resulting diversion rate, assuming 1% loss, is 0.337 CFS.*
6. *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.*

7. *Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*
8. *The former place of use of the transferred right as listed in Finding of Fact #4 shall no longer receive water under the right.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, 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 changes and full beneficial use of the water.*
10. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 4th day of April, 2012.


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

This Preliminary Determination was prepared by Joel Plahn. If you have questions about the information in this document, you may reach me at 503-986-0894 or Joel.M.Plahn@wr.d.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 97301-1266.

