

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-11271, Grant 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

AUXIER RESOURCES NO. 1, LLC
5285 MEADOWS ROAD, SUITE 333
LAKE OSWEGO, OR 97035

Findings of Fact

Background

1. On July 13, 2011, AUXIER NATURAL RESOURCES 1 filed an application to change the point of diversion under Certificate 25482. The Department assigned the application number T-11271.
2. On April 19, 2011, the applicant clarified the actual name of the company is AUXIER RESOURCES NO. 1, LLC.
3. The portion of the right to be transferred is as follows:

Certificate: 25482 in the name of MARY MACKAY (confirmed by John Day River Decree)

Use: IRRIGATION of 25.0 ACRES

Priority Date: 1900

Rate: 0.625 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water to which such right is entitled, for purposes aforesaid is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/40 cubic foot per second per acre irrigated from April 1 to September 30; further limited to one acre-foot per acre per calendar month

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.

to July 1 and ¾ acre-foot per acre thereafter; total five acre-feet per acre for season, measured at point of diversion.

Period of Use: April 1 to September 30

Source: JOHN DAY RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion: Not specified in Certificate

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	27 E	WM	5	SW SE	25.0

4. Certificate 25482 does not describe the location of the point of diversion, however information is available from the Certified Water Right Examiner indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	27 E	WM	4	NW SW	1430 FEET NORTH AND 560 FEET EAST OF THE SW CORNER OF SECTION 4

5. Transfer Application T-11271 proposes to move the authorized point of diversion approximately 4570 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	27 E	WM	5	SW SE	1270 FEET NORTH AND 40 FEET EAST FROM THE S¼ CORNER OF SECTION 5

6. Notice of the application for transfer was published on July 19, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On March 8, 2012, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11271 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 10, 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.
8. 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 not currently equipped with an appropriate fish screening and/or by-pass device. 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 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-11271.
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.

Determination and Proposed Action

The change in point of diversion proposed in Transfer Application T-11271 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.

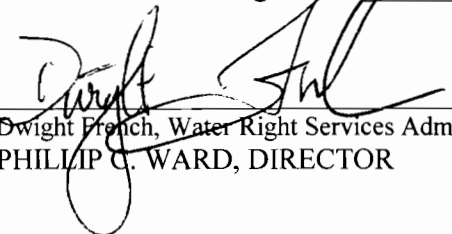
If Transfer Application T-11271 is approved, the final order will include the following:

1. *The change in point of diversion proposed in Transfer Application T-11271 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 25482 and any related decree.*
3. *Water right certificate 25482 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. *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 meters or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *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.

7. *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.*
8. *When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 26 day of April, 2012.


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@wrds.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.