



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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December 6, 2012

Applicants

STAN AND KAREN HARLAN
P.O. BOX 65
29027 SOUTH FORK RD
DAYVILLE, OR 97825

SUBJECT: Water Right Transfer Application T-10939

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-10939. 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 Department's notice *or* 30 days after the last date of newspaper publication, whichever is later.

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@wrdd.state.or.us if I may be of assistance.

Sincerely,

Dorothy Pedersen
Transfer Program Advisor

cc: T-10939

Eric W. Julsrud, District 4 Watermaster (*via e-mail*)

Kyle Sullivan, Agent/Grant Soil & Water Conservation Dist.→ (*via e-mail*:
sullivank@centurytel.net)

Robert Bagett, CWRE→ *address: 217 N. Canyon Blvd., John Day, OR 97845*

encs



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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-10939, Grant County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL 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

STAN & KAREN HARLAN
P.O. BOX 65
29027 SOUTH FORK RD
DAYVILLE, OR 97825

Agent

KYLE SULLIVAN
GRANT SOIL & WATER CONSERVATION DISTRICT
721 SOUTH CANYON BLVD.
JOHN DAY, OR 97845

Findings of Fact

Background

1. On July 31, 2009, Stanley G. Jr. and Karen L. Harlan filed an application to add an additional point of diversion under Certificates 25488, 25495, and 25496. The Department assigned the application number T-10939.

2. The portion of the FIRST right to be transferred is as follows:

Certificate: 25488 in the name of GAYNOR E. B. CAMPBELL – MARTIN (confirmed by John Day River (F))

Use: IRRIGATION of 1.4 ACRES

Priority Date: 1878

Limit/Duty: The amount of water to which such right is entitled, for the purpose of irrigation, is limited to an amount actually beneficially used for said purpose, and shall not exceed ONE-FORTIETH of one cubic foot per second per acre irrigated to June 1st, and ONE-EIGHTIETH of one cubic foot per second per acre thereafter; further limited to ONE-ACRE FOOT per calendar month to June 1st, and FOUR ACRE- FEET per acre during the irrigation season from April 1 to September 30, measured at the point of diversion

Source: SOUTH FORK JOHN DAY RIVER, tributary to the JOHN DAY 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:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	26 E	WM	12	SE NE	1.4

3. Certificate 25488 does not describe the location of the point of diversion, however information is available from the John Day River Decree and associated adjudication map indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q - Q	Diversion
13 S	27 E	WM	7	SW SW	Riley Ditch

4. Transfer application T-10939 proposes to add an additional point of diversion downstream approximately 6100 feet to a diversion located:

Proposed Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
13 S	27 E	WM	7	NW NW	830 Feet South and 1260 Feet East from the NW Corner of Section 7

5. The SECOND right to be transferred is as follows:

Certificate: 25495 in the name of LESLIE C. MARTIN (confirmed by John Day River (F))

Use: IRRIGATION of 11.4 ACRES

Priority Date: 1878

Limit/Duty: The amount of water to which such right is entitled, for the purpose of irrigation, is limited to an amount actually beneficially used for said purpose, and shall not exceed ONE-FORTIETH of one cubic foot per second per acre irrigated to June 1st, and ONE-EIGHTIETH of one cubic foot per second per acre thereafter; further limited to ONE-ACRE FOOT per calendar month to June 1st, and FOUR-ACRE FEET per acre during the irrigation season from April 1 to September 30, measured at the point of diversion

Source: SOUTH FORK JOHN DAY RIVER, tributary to the JOHN DAY RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	27 E	WM	7	NE NW	9.0
13 S	27 E	WM	7	NW NW	2.4

6. Certificate 25495 does not describe the location of the point of diversion, however information is available from the John Day River Decree and associated adjudication map indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q - Q	Diversion
13 S	27 E	WM	7	SW SW	Riley Ditch

7. Transfer Application T-10939 proposes to add an additional point of diversion downstream approximately 6100 feet to a diversion located:

Proposed Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
13 S	27 E	WM	7	NW NW	830 Feet South and 1260 Feet East

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
					from the NW Corner of Section 7

8. The THIRD right to be transferred is as follows:

Certificate: 25496 in the name of LESLIE C. MARTIN (confirmed by John Day River (F))

Use: IRRIGATION of 17.7 ACRES

Priority Date: JANUARY 11, 1897

Limit/Duty: The amount of water to which such right is entitled, for the purpose of irrigation, is limited to an amount actually beneficially used for said purpose, and shall not exceed ONE-FORTIETH of one cubic foot per second per acre irrigated to June 1st, and ONE-EIGHTIETH of one cubic foot per second per acre thereafter; further limited to ONE-ACRE FOOT per acre per calendar month to June 1st, further limited to FOUR-ACRE FEET per acre during the irrigation season from April 1 to September 30, measured at the point of diversion

Source: SOUTH FORK JOHN DAY RIVER, tributary to the JOHN DAY RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	27 E	WM	7	NE NW	2.3
13 S	27 E	WM	7	NW NW	15.4

9. Certificate 25496 does not describe the location of the point of diversion, however information is available from the John Day River Decree and associated adjudication map indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q - Q	Diversion
13 S	26 E	WM	12	SE NE	Dayville Ditch

10. Transfer Application T-10939 proposes to add an additional point of diversion downstream approximately ½ mile to a diversion located:

Proposed Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
13 S	27 E	WM	7	NW NW	830 Feet South and 1260 Feet East from the NW Corner of Section 7

11. Notice of the application for transfer was published on August 18, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice. However, the Oregon Department of Fish & 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 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.
12. No other comments were filed in response to the notice.

13. Accompanying the transfer application was a letter from Gary Wilson, Engineer for the Grant Soil and Water Conservation District (GSWCD), stating that this transfer is one of three transfers being proposed and a part of a complete project on the South Fork of the John Day River to improve irrigation efficiency, fish passage and habitat for listed steelhead and spring Chinook salmon. These projects would result in the elimination of three gravel push-up dams and would convert a fourth to a lay-flat stanchion structure, all allowing for the conversion of 115 acres from flood irrigation to sprinkler along a 5.5 mile reach of the river.
14. In addition to the support letter from the support letter from the GSWCD, the ODFW stated that because the transfer was submitted along with two other transfers as described in the tables below, the merits and impacts of the project may create an overall net benefit to the resource (fish) and wildlife habitat. The ODFW also stated that they would look forward to a more thorough review once the transfers proceed. Transfer application T-10938 (Lee Schrier) and T-10940 (Jim Gillespie) are being processed simultaneously with this transfer. The following table was submitted by the Grant Soil and Water Conservation District and may be used to evaluate the "package" as a whole in terms of the three associated transfer files being proposed on the South Fork John Day River. The table represents the movement of a specific amount of cubic foot per second per each segment of the river described.

From:		Distances (moving downstream from Cummings River Ditch)											
		Cummings Ditch		Miller Ditch		Campbell Martin Ditch		Riley Ditch		Gillespie Pump Station		Dayville Ditch	
To:		Miller Ditch		Campbell Martin Ditch		Riley Ditch		Gillespie Pump Station		Dayville Ditch		Harlan Pump Station	
	Distance:	0.53 mile		2.3 mile		0.4 mile		0.1 mile		0.8 mile		0.4 mile	
	Split Season Rate / Before & After June 1 st	1/40 th	1/80 th	1/40 th	1/80 th	1/40 th	1/80 th	1/40 th	1/80 th	1/40 th	1/80 th	1/40 th	1/80 th
Schrier Transfer (T-10938)	Move Water Right Cert#12096 upstream to fish friendly permanent lay-flat diversion structure to eliminate need for gravel push-up diversion	-0.035	-0.017										
Gillespie Transfer (T-10940)	Move part of Water Right 25488 & 25495 Downstream to Pump Station							1.27	0.64				
	Move part of Water Right 9154 & 9155 Downstream to Pump Station	0.68	0.34	0.68	0.34	0.68	0.34	0.68	0.34				
	Move Water Right 25490 & 25497 Downstream to Pump Station					0.49	0.24	0.49	0.24				
Harlan Transfer (T-10939)	Move part of Water Right 25488 & 25495 Downstream to Pump Station							0.32	0.16	0.32	0.16	0.32	0.16
	Move Water Right 25496 Downstream to Pump Station											0.44	0.22
Net Instream Benefit (cfs)*		0.645	0.323	0.68	0.34	1.17	0.58	2.76	1.38	0.32	0.16	0.76	0.38

15. The applicant and Watermaster have reported that in the summer of 2005, a fish-friendly, lay-flat stanchion design was installed at the Cummings Ditch diversion.
16. On November 28, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10939 to the applicant. The draft Preliminary Determination set forth a deadline of December 28, 2011 for the applicant to respond. On December 23, 2011, the agent, on behalf of the applicant, submitted a written response requesting the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
17. On October 16, 2012, Lee Schrier, applicant for the associated (upstream) transfer application T-10938 submitted a request to withdraw a portion of the place of use involved in the transfer and submitted a revised application and map to reflect the modification. The adjustment made to the place of use also necessitated modification to the amount of water associated with the new acreage amount. The table in Finding of Fact #14 above has been adjusted accordingly to reflect these changes to transfer application T-10938.

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

18. Water has been used within the last five years 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.
19. 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-10939.
20. The proposed change would not result in enlargement of the rights.
21. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change for an additional point of diversion proposed in Transfer Application T-10939 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-10939 is approved, the final order will include the following:

1. *The change to add an additional point of diversion proposed in application T-10939 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 Certificates and any related decree.*

3. *Water right certificates 25488, 25495 and 25496 are cancelled.*
4. *The quantity of water diverted at the new additional points of diversion, together with those diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *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 the new additional point of diversion. The water user shall maintain the meter or measuring devices in good working order. 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.*
6. *Prior to diverting water, the water user shall install a fish screening and/or fish 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 changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2014**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicants to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.*
8. *When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 4 day of December, 2012.


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

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@wrdd.state.or.us.

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