



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
503-986-0900  
FAX 503-986-0904

October 4, 2013

**Applicant**

SCOTT AND SARA JANE MOORE  
PO BOX 399  
MT. VERNON, OR 97865

**Agent**

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

**SUBJECT:** Water Right Transfer Application T-11274

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11274. 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 503-986-0886 or [Patrick.K.Starnes@ wrd.state.or.us](mailto:Patrick.K.Starnes@ wrd.state.or.us) if I may be of assistance.

Sincerely,

Kelly Starnes  
Transfer Specialist

cc: File T-11274  
Eric Julsrud, District 4 Watermaster (*via e-mail*)  
Kyle Sullivan, Grant Soil and Water Conservation District, Agent (*via e-mail*)  
Gary Wilson, CWRE #40091 (*via e-mail*)

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

In the Matter of Transfer Application            )    PRELIMINARY DETERMINATION  
T-11274, Grant County                            )    PROPOSING APPROVAL OF  
  )    CHANGES IN POINT OF DIVERSION  
  )    AND PLACE 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.

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**Findings of Fact**

**Background**

1. On July 25, 2011, Scott and Sara Moore filed an application to change the points of diversion and place of use under Certificates 52195, 88101 and 50672 (superseded by 87596). The Department assigned the application number T-11274.
2. Notice of the application for transfer was published on August 2, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 30, 2012, the Department issued water right Certificate 87596 and superseded 50672. Remaining right Certificate 87596 was issued as a result of transfer application T-11273, filed simultaneously with this transfer.
4. On August 20, 2013, the Department mailed a copy of the Preliminary Determination proposing to approve transfer application T-11274 to the applicant. The Preliminary Determination set forth a deadline of September 20, 2013, for the applicant to respond. On September 17, 2013, 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.

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.

5. The portion of the first right to be transferred is as follows:

**Certificate:** 52195 in the name of MOUNT VERNON IRRIGATION AND POWER C.O. (perfected under Permit E-88)  
**Use:** IRRIGATION of 3.7 ACRES  
**Priority Date:** MARCH 6, 1911  
**Rate:** 0.046 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-EIGHTIETH of one cubic foot per second per acre  
**Source:** JOHN DAY RIVER, tributary to the COLUMBIA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
13 S	30 E	WM	25	NE NW	PANAMA DITCH – SOUTH 72 DEGREES EAST 2705 FEET FROM THE NW CORNER OF SECTION 25

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	30 E	WM	29	SE NE	3.7

6. Transfer Application T-11274 proposes to change the place of use to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	30 E	WM	28	SW NW	2.1
13 S	30 E	WM	28	NW SW	1.6

7. Transfer Application T-11274 also proposes to change the point of diversion downstream approximately 3.5 miles on the John Day River for above described 3.7 acres to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
13 S	30 E	WM	28	NW SW	MOORE PUMP STATION – 220 FEET SOUTH AND 540 FEET EAST FROM THE W¼ CORNER OF SECTION 28

8. The portion of the second water right to be transfer is as follows:

**Certificate:** 88101 in the name of MOUNT VERNON IRRIGATION AND POWER C.O. (perfected under Permit S-46213)  
**Use:** SUPPLEMENTAL IRRIGATION of 3.7 ACRES  
**Priority Date:** JANUARY 8, 1981  
**Rate:** 0.046 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, limited to a diversion of not to exceed 5.0 acre-feet per acre for each acre irrigated during the irrigation season of each year  
**Source:** JOHN DAY RIVER, tributary to the COLUMBIA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
13 S	30 E	WM	25	NE NW	LATITUDE: NORTH 44.4166 LONGITUDE: WEST -119.0549

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	30 E	WM	29	SE NE	3.7

9. Transfer Application T-11274 proposes to change the place of use to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	30 E	WM	29	SW NW	2.1
13 S	30 E	WM	29	NW SW	1.6

10. Transfer Application T-11274 also proposes to change the point of diversion downstream approximately 3.5 miles on the John Day River for above described 3.7 acres to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
13 S	30 E	WM	28	NW SW	MOORE PUMP STATION - 220 FEET SOUTH AND 540 FEET EAST FROM THE W <sup>1</sup> / <sub>4</sub> CORNER OF SECTION 28

11. The portion of the third water right to be transferred is as follows:

**Certificate:** 87596 in the name of DONALD AND ELSA BOYER (perfected under Permit S-28815)

**Use:** IRRIGATION of 16.8 ACRES

**Priority Date:** APRIL 25, 1963

**Rate:** 0.42 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 a diversion of 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year, provided further that the right to the use of water is limited to the period when the flow of the John Day River is more than 30 cfs at USGS Gage 14-0465 and more than 20 cfs at USGS Gage 14-0480

**Source:** Beech Creek, tributary to the JOHN DAY RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
13 S	30 E	WM	28	SE NW	BEECH CREEK - 1620 FEET SOUTH AND 2330 EAST FROM THE NW CORNER OF SECTION 28

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	30 E	WM	28	SW NW	6.0
13 S	30 E	WM	28	NW SW	8.0
13 S	30 E	WM	29	SE NE	1.8
13 S	30 E	WM	29	NE SE	1.0

12. Transfer Application T-11274 proposes to change the place of use to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
13 S	30 E	WM	28	SW NW	8.0
13 S	30 E	WM	28	NW SW	3.9
13 S	30 E	WM	29	SE NE	4.3
13 S	30 E	WM	29	NE SE	0.6

13. Transfer Application T-11274 also proposes to change the point of diversion down Beech Creek approximately 1000 feet and downstream approximately 1110 feet on the John Day River for above described 16.8 acres to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
13 S	30 E	WM	28	NW SW	MOORE PUMP STATION – 220 FEET SOUTH AND 540 FEET EAST FROM THE W¼ CORNER OF SECTION 28

14. The source of water under this right is Beech Creek. The quantity of water diverted at the new point of diversion on the John Day River shall not exceed the quantity of water lawfully available at the original point of diversion on Beech Creek.
15. To ensure the source remains Beech Creek, suitable measuring devices for a “measure in – measure out” of the Beech Creek water entering the John Day River and then being pumped out again at the proposed point of diversion must be installed.
16. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

18. 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 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-11274.
20. The proposed changes 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 in points of diversion and place of use proposed in Transfer Application T-11274 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-11274 is approved, the final order will include the following:*

1. *The changes in points of diversion and places of use proposed in Transfer Application T-11274 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 Certificate 52195, 88101 and 87596 and any related decree.*
3. *Water right certificates 52195, 88101 and 87596 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
4. *The quantity of water diverted at the new points of diversion together with that diverted at the original points of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.*
5. *Water use measurement conditions:*
  - a. *Before water use may begin under this order, the water user shall install a measuring device in the main channel of Beech Creek below the authorized point of diversion to enable measurement of the quantity of Beech Creek water that will enter the John Day River. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.*
  - b. *The water user must coordinate with Oregon Dept. of Fish and Wildlife and the Oregon Dept. of State Lands for the appropriate permits or construction criteria needed for the installation and operation of the measuring device.*
  - c. *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.*
  - d. *The water user shall maintain the meters or measuring devices in good working order.*
  - e. *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 screen 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 former places of use of the transferred rights shall no longer receive water under the rights.*
8. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2015**. 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.*
9. *After 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 October 2013.

  
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@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.