



# Oregon

John A. Kitzhaber, MD, Governor

**Water Resources Department**  
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January 14, 2014

AUSTIN AND JEANA BINGAMAN  
PO BOX 222  
IMBLER, OR 97841

SUBJECT: Water Right Transfer Application T-11596

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11596. 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, 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.

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@wrds.state.or.us](mailto:Patrick.K.Starnes@wrds.state.or.us) if I may be of assistance.

Sincerely,

Kelly Starnes  
Transfer Program Analyst  
Transfer and Conservation Section]

cc: Transfer Application file T-11596  
Shad L. Hattan, District 6 Watermaster (*via e-mail*)  
Gregory T. Blackman, Agent/CWRE for the applicant (*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-11596, Union County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN PLACE OF USE AND 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.

**Applicants**

AUSTIN AND JEANA BINGAMAN  
P.O. BOX 222  
IMBLER, OR 97841

**Agent**

GREG BLACKMAN  
126 RIDGE DRIVE  
LA GRANDE, OR 97850

**Findings of Fact**

***Background***

1. On May 10, 2013, Austin and Jeana Bingaman filed an application to change the place of use under Certificate 85560. The Department assigned the application number T-11596.
2. Notice of the application for transfer was published on May 21, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 3, 2013, the department received an amended application and map modifying the transfer to including a change in point of diversion.
4. On December 6, 2013, the applicant's agent requested to extend the completion date to October 1, 2020.
5. Transfer Application T-11662 was filed September 5, 2013. This transfer modifies the same right proposed in T-11596. Certificate 85560 shall be canceled after both transfer applications are processed.

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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6. On December 5, 2013, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11596 to the applicants. The Preliminary Determination cover letter set forth a deadline of January 3, 2014, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
7. The portion of the right to be transferred is as follows:

**Certificate:** 85560 in the name of ORODELL DITCH ASSOCIATION (confirmed by Grande Ronde River, Consolidated )

**Use:** IRRIGATION of 40.0 ACRES

**Priority Date:** 1872

**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-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** GRANDE RONDE RIVER, tributary to the SNAKE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Ditch Name
2 S	38 E	WM	31	SW SW	Orodell Ditch

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	38 E	WM	28	SE SE	40.0

8. This right is further limited by the Grande Ronde River Consolidated decree stating that the Orodell Ditch Association is entitled to divert 100 miner's inched between September first of each year and May first of the following year, 500 miner's inches between May first and July first of each year, and 200 miner's inches between July first and September first of each year, but at no time shall said Orodell Ditch Association divert more than half of the flow of the Grande Ronde River.
9. Transfer Application T-11596 proposes to change the point of diversion upstream because of federal highway re-alignment to within the same quarter quarter to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
2 S	38 E	WM	31	SW SW	1858.33 FEET SOUTH AND 80.84 FEET EAST FROM THE W¼ CORNER OF SECTION 31

10. Transfer Application T-11596 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	38 E	WM	22	NE SW	40.0

11. The Oregon Department of Fish and Wildlife 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 currently equipped with an appropriate fish screen.

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

12. 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 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 right was present within the five-year period prior to submittal of Transfer Application T-11596.
14. The proposed changes would not result in enlargement of the right.
15. The proposed changes would not result in injury to other water rights.

**Determination and Proposed Action**

The changes in place of use and point of diversion proposed in Transfer Application T-11596 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-11596 is approved, the final order will include the following:*

1. *The changes in place of use and point of diversion proposed in Transfer Application T-11596 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 85560 and any related decree.*
3. *Water Right Certificate 85560 is modified and will be canceled upon approval or denial of T-11622. 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. *The water user shall maintain and operate a fish screening and/or by-pass device as appropriate, at the point of diversion consistent with Oregon Department of Fish and Wildlife's operational and maintenance standards.*
6. *The former place of use of the transferred right shall no longer receive water under the right.*

7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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.*
8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 10 day of January, 2014.

  
Dwight French, Water Right Services Administrator, for  
PHILLIP 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 x 223 or [Carrie.R.Matthews@wrđ.state.or.us](mailto:Carrie.R.Matthews@wrđ.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.