



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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725 Summer Street NE, Suite A  
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February 4, 2014

VIA E-MAIL

**Applicant**

Larry Blakeslee  
PO Box 366  
Monument, OR 97864

**Agent**

Elaine Eisenbraun  
North Fork John Day Watershed Council  
PO Box 444  
Long Creek, OR 97856

**SUBJECT:** Water Right Transfer Application T-11527

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department has concluded that approval of the change in point of diversion proposed in T- 11527 would result in injury to instream water right Certificates 66611 and 72643. Consistent with your request that we seek a recommendation from the Department of Fish and Wildlife on whether we should consent to the injury to the instream water right, we are proceeding with that process concurrently with issuance of the preliminary determination.

The Water Resources Department holds instream water rights in trust for the benefit of the people of Oregon. Under ORS 540.530(c), we may approve the transfer only if the agency that requested the instream water right concludes that the changes proposed will result in net benefits to the resources protected by the instream water right, and recommends that we consent to the injury of the right. Please contact the agency staff person to whom the agency review letter has been sent, to discuss whether you may be able to assist in providing information needed for the analysis.

After we have received a recommendation from the Oregon Department of Fish and Wildlife on whether to consent to the injury, provided no protests have been filed, we will issue an order either:

- Approving the transfer with conditions, if any, identified in the agency recommendations as necessary to ensure that the change will result in net benefits, or
- Reaffirming our decision that the instream water right would be injured and denying the transfer.

The timing for issuance of the order will depend on the availability of information needed by ODFW to perform the net benefits analysis upon which their recommendation must be based, and the time necessary to allow public review and comment on the recommendation. You are not authorized to use water from the proposed point of diversion pending a final decision by the Department on your transfer application.

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

Sincerely,



Kelly Starnes

Transfer Program Analyst  
Transfer and Conservation Section

cc: Transfer Application File T-11527  
Eric Julsrud, District 21 Watermaster (*via e-mail*)  
Robert D. Bagett, CWRE #009 (*via e-mail*)

encs

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

In the Matter of Transfer Application            )    **PRELIMINARY DETERMINATION**  
T-11527, Grant County                            )    **PROPOSING DENIAL 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.

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**Findings of Fact**

***Background***

1. On January 25, 2013, LARRY BLAKESLEE filed an application to change the point of diversion under Certificate 82456. The Department assigned the application number T-11527.
2. Notice of the application for transfer was published on February 5, 2013, pursuant to OAR 690-380-4000. The Oregon Department of Fish and Wildlife filed a response to the notice, stating that moving a proposed point of diversion one-quarter of a mile upstream on the North Fork of the John Day River would injure instream water right Certificates 66611 and 72643.
3. The portion of the right to be transferred is as follows:  
**Certificate:** 82456 in the name of JACK O. AND PAULINE G. SWEEK (perfected under Permit S-32445)  
**Use:** IRRIGATION OF 32.2 ACRES  
**Priority Date:** MARCH 20, 1967  
**Rate:** 0.28 CUBIC FOOT PER SECOND

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.

**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) and 5.0 acre-feet for each acre irrigated during the irrigation season of each year.

**Source:** NORTH FORK JOHN DAY RIVER, tributary to the JOHN DAY RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	27 E	WM	4	SE SE	4150 FEET SOUTH AND 5250 FEET EAST FROM THE NW CORNER OF SECTION 4

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	27 E	WM	3	NW SW	4.6
9 S	27 E	WM	3	SW SW	0.5
9 S	27 E	WM	4	SE NE	12.0
9 S	27 E	WM	4	NE SE	14.9
9 S	27 E	WM	4	SE SE	0.2
TOTAL					32.2

4. Transfer Application T-11527 proposes to change the point of diversion upstream approximately 1,300 feet to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	27 E	WM	3	SW SW	3660 FEET SOUTH AND 6460 FEET EAST FROM THE NW CORNER OF SECTION 4

5. Accompanying the transfer application was a report/narrative from Jeff Neal, Fish Biologist with the Oregon Department of Fish and Wildlife (ODFW), stating that this transfer has been one of several fish habitat improvement projects that have been proposed and implemented and is another North Fork John Day River Watershed Council project focused on restoration efforts in improving fish passage and riparian function at irrigation diversion dams. This project would result in the elimination of another gravel push-up dam and would be converted to a scour pool where adequate water depth is available for pumping.
6. On October 30, 2013, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-11527 to the applicant. The cover letter for the draft Preliminary Determination set forth a deadline of November 29, 2013 for the applicant to respond. On November 13, 2013, the agent for 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.
7. 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 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)]***

8. The applicant submitted evidence that the 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 right is subject to forfeiture under ORS 540.610.
9. A pump, pipeline, and sprinkler system 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-11527.
10. The Watermaster has made a statement that there is typically ample flow in the North Fork John Day River where there are not shortages for senior appropriators or instream water rights. The Watermaster also stated he has not witnessed a summer where regulation on the North Fork of the John Day River rarely was required since the summer of 2000.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would result in injury to two instream water rights. Instream water right Certificate 66611, created under ORS 537.346, and water right Certificate 72643, created under ORS 537.341, exists for the reach of the river in which the authorized point of diversion would be moved upstream, and stream flows within the reach are frequently below the levels allocated under these two instream water rights. Thus, the instream water rights would be injured as a result of the proposed change in point of diversion.

13. Streamflows in the reach of the North Fork John Day River covered by the instream water rights are measured at the gage 14046000 near Monument, Oregon. Summary data for the period of record is available March 1, 1925 to current year, is published in USGS Open-File Reports and now available at the Department's website. The following table provides a comparison of monthly North Fork John Day River streamflows at the gage near Monument and the instream water rights:

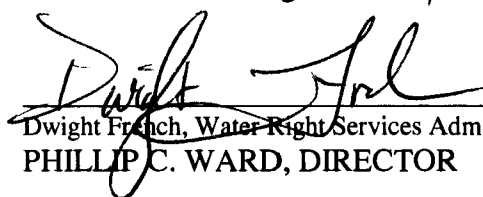
Month	Natural Stream Flow @ 80% Exceedance (cfs)	Instream Water Right Certificate 72643 (cfs) Monthly period		Instream Water Right Certificate 66611 (cfs)	80% Flows minus out-of-stream consumptive uses, reserved and instream requirements (net water available)
		1 <sup>st</sup> Half	2 <sup>nd</sup> Half		
January	293	235	225	55	20.1
February	523	235	380	55	68.1
March	952	380	380	55	464
April	1,830	380	380	55	1210
May	2,130	380	380	55	1480
June	813	235	235	55	472
July	215	175	175	55	-22.4
August	120	157	157	55	-85.4
September	109	140	140	55	-64.3
October	127	168	168	55	-55.7
November	165	235	235	55	-75.1
December	216	235	235	55	-45.3

14. The instream water rights would be injured as a result of the proposed change in point of diversion.

#### Determination and Proposed Action

The change the point of diversion proposed in Transfer Application T-11527 does not appear to be consistent with the requirements of ORS 537.705 and ORS 540.505 to 540.580 and OAR 690-380-5000. Pursuant to ORS 540.530, the transfer application will be DENIED unless the Oregon Department of Fish and Wildlife recommends that the Department consent to injury of the instream water rights, pursuant to OAR 690-380-5050, or Protests are filed pursuant to OAR 690-380-4030.

Dated at Salem, Oregon this 6 day of February 2014.

  
 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@ wrd.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.