



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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March 4, 2014

VIA E-MAIL

### **Applicant**

MARK AND JULIE WINTON  
25328 KEATING GRANGE LANE  
BAKER CITY, OR 97814  
**e-mail:wintonangusranch@hotmail.com**

### **Agent**

NANCY RORICK CONSULTING  
645 L LOOP  
BAKER CITY, OR 97814  
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**SUBJECT: Water Right Transfer Application T-11632**

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11632. 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 Baker City Herald 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@wrdd.state.or.us](mailto:Patrick.K.Starnes@wrdd.state.or.us) if I may be of assistance.

Sincerely,

Kelly Starnes  
Transfer Program Analyst  
Transfer and Conservation Section

cc: Transfer Application file T-11632  
Rick Lusk, District 8 Watermaster (via e-mail)

encs



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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11632, Baker County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINTS 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**

1. On July 3, 2013, Mark L. and Julie A. Winton filed an application to change the points of diversion under Certificates 74050. The Department assigned the application number T-11632.
2. Notice of the application for transfer was published on July 9, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. Transfer Application T-11632 proposed to modify water rights within the boundaries of Lower Powder Irrigation District. The district was notified of the proposed temporary transfer and indicated that the district did not object to the transfer.
4. Transfer Application T-11632 proposes transfer water rights served by a Bureau of Reclamation storage project. The Bureau was notified of the proposed transfer and did not provide any comments.
5. On December 24, 2013, the Department sent a copy of the Draft Preliminary Determination proposing to approve Transfer Application T-11632 to the applicants. The Preliminary Determination cover letter set forth a deadline of January 24, 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.

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.

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

**Certificate:** 74050 in the name of U.S. BUREAU OF RECLAMATION (perfected under Permit S-11092)  
**Use:** IRRIGATION OF 127.0 ACRES  
**Priority Date:** NOVEMBER 4, 1933  
**Rate:** 2.15 CFS from POD No. 2 and 1.02 CFS from a combination of POD No. 6 and POD No. 8  
**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 per acre, from direct flow, or its equivalent for each acre irrigated during the irrigation season from April 1, to October 1 of each year.  
**Source:** POWDER RIVER, tributary of the SNAKE RIVER INCLUDING WATER STORED IN THIEF VALLEY RESERVOIR, CONSTRUCTED UNDER PERMIT R-667 A TRIBUTARY OF POWDER RIVER.

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	41 E	WM	28	NW SE	BASCHE DITCH (POD NO. 2) - 1880 FEET NORTH AND 600 FEET EAST FROM THE S¼ CORNER OF SECTION 28.
8 S	42 E	WM	17	NW SW	PERKINS DITCH (POD NO. 6) - 50 FEET SOUTH AND 800 FEET EAST FROM THE W¼ CORNER OF SECTION 17.
8 S	42 E	WM	18	NE NE	OLD PERKINS DITCH NO. 8 - 900 FEET SOUTH AND 700 FEET WEST FROM THE NE CORNER OF SECTION 18.

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	POD	Acres
8 S	43 E	WM	32	SW SW	2	8.0
8 S	43 E	WM	32	SE SW	2	0.8
8 S	43 E	WM	33	SW SW	6 & 8	2.1
9 S	43 E	WM	4	NE NW	6 & 8	10.3
9 S	43 E	WM	4	NW NW	6 & 8	8.6
9 S	43 E	WM	5	NE NE	2	3.2
9 S	43 E	WM	5	NE NE	6 & 8	18.8
9 S	43 E	WM	5	NW NE	6 & 8	1.2
9 S	43 E	WM	5	NW NE	2	31.0
9 S	43 E	WM	5	NE NW	2	24.3
9 S	43 E	WM	5	NW NW	2	18.7
Total Acres:						127.0

7. Transfer Application T-11632 proposes to move the authorized points of diversion downstream approximately 13.4 miles from the Bache ditch, 8.0 miles from the Old Perkins Ditch and 7.5 miles from the Perkins Ditch to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Tax Lot	Measured Distances
9 S	43 E	WM	5	NW NE	2	400	POD 1 - 75 FEET SOUTH AND 1545 FEET WEST FROM THE NE CORNER OF SECTION 5.

8. The Oregon Department of Fish and Wildlife (ODFW) 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. Listed fish species are not present at the point of diversion, the originating water right diversion is not screened, cost-share funds are not currently available, and the proposed diversion may be eligible for ODFW's cost-share program. A grace period of two years is appropriate until such time as cost-share funds become available to assist in the construction of a fish screen. If cost-share funds do not become available, the water user must screen within the indicated time period regardless of the availability of cost-share funding.

***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 was present within the five-year period prior to submittal of Transfer Application T-11632.
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**

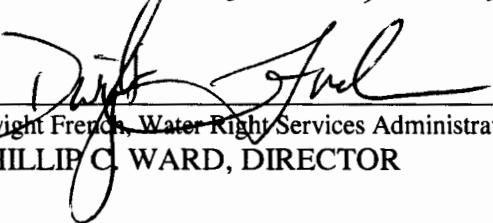
The change in points of diversion proposed in Transfer Application T-11632 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-11632 is approved, the final order will include the following:*

1. *The change in points of diversion proposed in Transfer Application T-11632 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 74050 and any related decree.*
3. *Water right certificate 74050 is cancelled. A new certificate will be issued describing those portions 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 points 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 at the new point of diversion.*
  - b. *The water user shall maintain the meter in good working order.*
  - c. *The water user shall allow the Watermaster access to the meter; provided however, where the meter is located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Within two years after the date of this order the water user shall install an approved fish screen at the new point of diversion. The water user may withdraw water at the new point of diversion without a screen until then. The water user shall provide to OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary. The water user shall maintain and operate the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, 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 change 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 3 day of March 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@wrdd.state.or.us](mailto:Carrie.R.Matthews@wrdd.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.