



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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May 9, 2014

CHESTER A. SMITH, JR. AND ALTA M. SMITH  
1137 AUTUMN LANE  
GLENDALE OR 97442

SUBJECT: Water Right Transfer Application T-11627

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11627. 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 News Review (Douglas County) 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@wr.d.state.or.us](mailto:Patrick.K.Starnes@wr.d.state.or.us) if I may be of assistance.

Sincerely,

Kelly Starnes  
Transfer Analyst

cc: Transfer Application file T-11627  
Dave Williams, District 15 Watermaster (*via e-mail*)  
Raymond F. Brown, CWRE #234

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**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:** COW CREEK, tributary to the UMPQUA RIVER\*

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
32 S	5 W	WM	19	SE SE	75 FEET NORTH AND 630 FEET WEST FROM THE SE CORNER OF SECTION 19

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	30	SW NW	24.6
32 S	5 W	WM	30	NW SW	0.6

- Transfer Application T-11627 proposes an additional point of diversion downstream approximately 8,800 feet to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
32 S	6 W	WM	25	SW NE	370 FEET NORTH AND 1965 FEET WEST FROM THE E¼ CORNER OF SECTION 25

- The Department has determined that the water use subject to transfer, Certificate 58504, inadvertently has identified Cow Creek as tributary to the Umpqua River\*, when in fact, it clearly is tributary to the South Umpqua River. This diversion on Cow Creek is located at River Mile 47 on the Department’s Basin Map, and clearly shows up on the adjudication map as well. Both being tributary to the South Umpqua River. Cow Creek flows in a clockwise direction from this diversion and dumps into the South Umpqua River near the town of Riddle, Oregon. The Department concludes that the water right of record should be corrected to describe the correct name of the river that Cow Creek is tributary to, that being the South Umpqua River.
- 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)]**

- 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.
- A diversion structure and ditch 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-11627.
- The proposed change would not result in enlargement of the right.

11. The proposed change would not result in injury to other water rights.

### **Determination and Proposed Action**

The additional point of diversion proposed in Transfer Application T-11627 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.

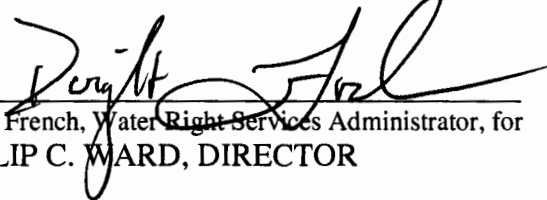
*If Transfer Application T-11627 is approved, the final order will include the following:*

1. *The additional point of diversion proposed in Transfer Application T-11627 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 58504 and any related decree.*
3. *Water right Certificate 58504 is cancelled. 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 additional point of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point 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 the new point of diversion.*
  - b. The water user shall maintain the meter or measuring device in good working order.*
  - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device are located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the 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 operate and maintain 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 12 day of May 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](mailto:Ken.D.Dowden@ wrd.state.or.us)